

# Senate File 559 - Enrolled

PAG LIN

SENATE FILE 559

AN ACT

RELATING TO CEMETERY AND FUNERAL MERCHANDISE, FUNERAL SERVICES,  
AND CEMETERIES AND PROVIDING FEES AND PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

CEMETERY AND FUNERAL MERCHANDISE,  
FUNERAL SERVICES, AND CEMETERIES == REGULATION

Section 1. Section 22.7, Code 2007, is amended by adding  
the following new subsection:

NEW SUBSECTION. 58. Information filed with the  
commissioner of insurance pursuant to sections 523A.204 and  
523A.502A.

Sec. 2. Section 523A.102, subsection 6, Code 2007, is  
amended to read as follows:

6. "Commissioner" means the commissioner of insurance or  
~~the deputy administrator authorized in section 523A.801 to the~~  
~~extent the commissioner delegates functions to the deputy~~  
~~administrator commissioner's designee.~~

Sec. 3. Section 523A.102, subsection 11, Code 2007, is  
amended by striking the subsection.

Sec. 4. Section 523A.102, Code 2007, is amended by adding  
the following new subsection:

NEW SUBSECTION. 26A. "Sales agent" means a person,  
including an employee, who is authorized by a seller to sell  
cemetery merchandise, funeral merchandise, funeral services,  
or a combination thereof, on behalf of the seller.

Sec. 5. Section 523A.102, subsection 27, Code 2007, is  
amended to read as follows:

27. "Seller" or "preneed seller" means a person doing  
business within this state, including a person doing business  
within this state who sells insurance, who advertises, sells,  
promotes, or offers to furnish cemetery merchandise, funeral  
merchandise, funeral services, or a combination thereof when  
performance or delivery may be more than one hundred twenty  
days following the initial payment on the account whether the  
transaction is completed or offered in person, through the  
mail, over the telephone, by the internet, or through any  
other means of commerce. "Seller" or "preneed seller"  
includes any person performing any term of a purchase  
agreement executed within this state, and any person  
identified under a burial account as the provider of cemetery  
merchandise, funeral merchandise, funeral services, or a  
combination thereof.

Sec. 6. Section 523A.201, subsection 3, Code 2007, is  
amended to read as follows:

3. If a purchase agreement for cemetery merchandise,  
funeral merchandise, funeral services, or a combination  
thereof provides that payments are to be made in installments,  
the seller shall deposit eighty percent of each payment in the  
trust fund until the full amount required to be placed in  
trust has been deposited. If the purchase agreement is  
financed with or sold to a financial institution, the purchase  
agreement shall be considered paid in full and the trust  
requirements shall be satisfied within fifteen days after the  
~~close of the month in which the~~ seller receives funds from the  
financial institution.

Sec. 7. Section 523A.201, subsection 5, Code 2007, is  
amended by striking the subsection and inserting in lieu  
thereof the following:

5. Unless a seller deposits all of each payment in a trust  
fund that meets the requirements of this section and section  
523A.202, the seller shall have a fidelity bond or similar  
insurance in an amount of not less than fifty thousand dollars  
to protect against the loss of purchaser payments not placed  
in trust within the time period required by this section and  
section 523A.202. The commissioner may require a greater  
amount as the commissioner determines is necessary. If the  
seller changes ownership, the fidelity bond or similar  
insurance shall continue in force for at least one year after

3 4 the transfer of ownership.  
3 5 Sec. 8. Section 523A.201, subsections 8 and 10, Code 2007,  
3 6 are amended to read as follows:  
3 7 8. Interest or income earned on amounts deposited in trust  
3 8 shall remain in trust under the same terms and conditions as  
3 9 payments made under the purchase agreement, except that ~~the~~  
~~3 10 seller a limited liability corporation that was formed in 2002~~  
~~3 11 for the purpose of purchasing a cemetery from a foreign entity~~  
~~3 12 reorganizing under bankruptcy and such corporation is~~  
~~3 13 comprised of six establishments all located within the same~~  
~~3 14 county~~ may withdraw so much of the interest or income as  
3 15 represents the difference between the amount needed to adjust  
3 16 the trust funds for inflation as set by the commissioner based  
3 17 on the consumer price index and the interest or income earned  
3 18 during the preceding year not to exceed fifty percent of the  
3 19 total interest or income on a calendar-year basis. The early  
3 20 withdrawal of interest or income under this provision does not  
3 21 affect the purchaser's right to a credit of such interest or  
3 22 income in the event of a nonguaranteed price agreement,  
3 23 cancellation, or nonperformance by ~~the seller such limited~~  
~~3 24 liability corporation.~~  
3 25 10. If a seller voluntarily or involuntarily ceases doing  
3 26 business and the seller's obligation to provide merchandise or  
3 27 services has not been assumed by another ~~establishment seller~~  
3 28 holding a current ~~establishment permit~~ preneed seller's  
~~3 29 license~~, all trust funds, including accrued interest or  
3 30 income, shall be repaid to the purchaser within ~~one hundred~~  
~~3 31 twenty thirty~~ days following the seller's cessation of  
3 32 business or, in the event of circumstances where a payment is  
~~3 33 not possible within one hundred twenty days, as soon as is~~  
~~3 34 reasonably practicable. A seller may petition the~~  
~~3 35 commissioner, upon a showing of good cause, for a longer~~  
~~4 1 period of time for repayment. A seller shall notify the~~  
~~4 2 commissioner at least thirty days prior to ceasing business.~~  
4 3 Sec. 9. Section 523A.202, subsection 4, Code 2007, is  
4 4 amended to read as follows:  
4 5 4. This section does not prohibit moving trust funds from  
4 6 one financial institution to another if the commissioner is  
~~4 7 notified of the change within thirty days of the transfer of~~  
~~4 8 the trust funds.~~  
4 9 Sec. 10. Section 523A.203, Code 2007, is amended by adding  
4 10 the following new subsection:  
4 11 NEW SUBSECTION. 7. Unless proceeding under section  
4 12 523A.403, investment and management decisions for all trust  
4 13 funds shall be made in accordance with the provisions of  
4 14 section 633A.4302.  
4 15 Sec. 11. Section 523A.204, Code 2007, is amended by  
4 16 striking the section and inserting in lieu thereof the  
4 17 following:  
4 18 523A.204 PRENEED SELLER ANNUAL REPORTING REQUIREMENTS.  
4 19 1. A preneed seller shall file with the commissioner not  
4 20 later than April 1 of each year an annual report on a form  
4 21 prescribed by the commissioner.  
4 22 2. A preneed seller filing an annual report shall pay a  
4 23 filing fee of ten dollars per purchase agreement sold during  
4 24 the year covered by the report. Duplicate fees are not  
4 25 required for the same purchase agreement. If a purchase  
4 26 agreement has multiple sellers, the fee shall be paid by the  
4 27 preneed seller actually providing the merchandise and  
4 28 services.  
4 29 3. All records maintained by the commissioner under this  
4 30 section shall be confidential pursuant to section 22.7,  
4 31 subsection 58, and shall not be made available for inspection  
4 32 or copying except upon the approval of the commissioner or the  
4 33 attorney general.  
4 34 4. The commissioner shall levy an administrative penalty  
4 35 in the amount of five hundred dollars against a preneed seller  
5 1 that fails to file the annual report when due, payable to the  
5 2 state for deposit in the general fund of the state.  
5 3 5. A preneed seller that fails to file the annual report  
5 4 when due shall immediately cease soliciting or executing  
5 5 purchase agreements until the annual report is filed and any  
5 6 administrative penalty assessed has been paid.  
5 7 Sec. 12. Section 523A.206, Code 2007, is amended by  
5 8 striking the section and inserting in lieu thereof the  
5 9 following:  
5 10 523A.206 EXAMINATIONS == AUTHORITY AND SCOPE.  
5 11 1. The commissioner may conduct an examination under this  
5 12 chapter of any seller as often as the commissioner deems  
5 13 appropriate. If a seller has a trust arrangement, the  
5 14 commissioner shall conduct an examination of such seller doing

5 15 business in this state not less than once every three years  
5 16 unless the seller has provided to the commissioner, on an  
5 17 annual basis, a certified copy of an audit conducted by an  
5 18 independent certified public accountant verifying compliance  
5 19 with this chapter. The commissioner may require an audit of a  
5 20 seller, or other person by a certified public accountant to  
5 21 verify compliance with the requirements of this chapter,  
5 22 including rules adopted and orders issued pursuant to this  
5 23 chapter.

5 24 2. A seller shall reimburse the division for the expense  
5 25 of conducting the examination, including an audit conducted by  
5 26 a certified public accountant, unless the commissioner waives  
5 27 this requirement, or the seller has previously provided to the  
5 28 commissioner a certified copy of an audit conducted by an  
5 29 independent certified public accountant verifying compliance  
5 30 with this chapter for each year in question and the  
5 31 examination conducted by the commissioner does not disclose  
5 32 that the seller has not complied with this chapter for the  
5 33 years in question. The expense of an examination involving  
5 34 multiple sellers or other persons shall be prorated among them  
5 35 upon any reasonable basis as determined by the commissioner.

6 1 3. For purposes of completing an examination under this  
6 2 chapter, the commissioner may examine or investigate any  
6 3 person, or the business of any person, if the examination or  
6 4 investigation is, in the sole discretion of the commissioner,  
6 5 necessary or material to the examination of the seller.

6 6 4. Upon determining that an examination should be  
6 7 conducted, the commissioner may appoint one or more examiners  
6 8 to perform the examination and instruct those examiners as to  
6 9 the scope of the examination.

6 10 5. A seller, or other person from whom information is  
6 11 sought, and its officers, directors, employees, and agents  
6 12 shall provide to the examiners appointed under subsection 4,  
6 13 timely, convenient, and free access at their offices, at all  
6 14 reasonable hours, to all books, records, accounts, papers,  
6 15 documents, and all electronic or other recordings related to  
6 16 the property, assets, business, and affairs of the seller  
6 17 being examined and shall facilitate the examination as much as  
6 18 possible.

6 19 a. The refusal of a seller, by its officers, directors,  
6 20 employees, or agents, to submit to an examination or to comply  
6 21 with a reasonable written request of an examiner shall  
6 22 constitute grounds for the suspension, revocation, or  
6 23 nonrenewal of any license held by the seller to engage in  
6 24 business subject to the commissioner's jurisdiction.

6 25 b. If a seller declines or refuses to submit to an  
6 26 examination as provided in this chapter, the commissioner  
6 27 shall immediately suspend, revoke, or nonrenew any license  
6 28 held by the seller or business to engage in business subject  
6 29 to the commissioner's jurisdiction, and shall report the  
6 30 commissioner's action to the attorney general, who shall  
6 31 immediately apply to the district court for the appointment of  
6 32 a receiver to administer the final affairs of the seller.

6 33 6. The commissioner shall not make information obtained in  
6 34 the course of an examination public, except when a duty under  
6 35 this chapter requires the commissioner to take action against  
7 1 a seller or to cooperate with another law enforcement agency,  
7 2 or when the commissioner is called as a witness in a civil or  
7 3 criminal proceeding.

7 4 7. This section shall not be construed to limit the  
7 5 commissioner's authority to terminate or suspend any  
7 6 examination in order to pursue other legal or regulatory  
7 7 actions pursuant to this chapter. Findings of fact and  
7 8 conclusions made pursuant to an examination are deemed to be  
7 9 prima facie evidence in any legal or regulatory action.

7 10 Sec. 13. NEW SECTION. 523A.207 AUDITS BY CERTIFIED  
7 11 PUBLIC ACCOUNTANTS.

7 12 A purchase agreement shall not be sold or transferred, as  
7 13 part of the sale of a business or the assets of a business,  
7 14 until an audit has been performed by a certified public  
7 15 accountant and filed with the commissioner that expresses the  
7 16 auditor's opinion of the adequacy of funding related to the  
7 17 purchase agreements to be sold or transferred.

7 18 Sec. 14. Section 523A.404, subsection 1, unnumbered  
7 19 paragraph 1, Code 2007, is amended to read as follows:

7 20 Trust requirements do not apply to payments made pursuant  
7 21 to a purchase agreement executed prior to July 1, 2007, for  
7 22 outer burial containers made of either polystyrene or  
7 23 polypropylene or cemetery merchandise delivered to the  
7 24 purchaser or stored in an independent third-party storage  
7 25 facility not owned or controlled by the seller when approved

7 26 by the commissioner. The seller or the storage facility must  
7 27 demonstrate that they will do all of the following:  
7 28 Sec. 15. Section 523A.404, subsection 1, paragraphs f and  
7 29 h, Code 2007, are amended to read as follows:  
7 30 f. Use a method of storage that allows for visual ~~audits~~  
7 31 examinations of the merchandise.  
7 32 h. File a consent to be ~~audited~~ examined and inspected by  
7 33 the commissioner.  
7 34 Sec. 16. Section 523A.501, Code 2007, is amended to read  
7 35 as follows:  
8 1 523A.501 ~~ESTABLISHMENT -- PERMITS PRENEED SELLERS ==~~  
8 2 LICENSES.  
8 3 1. A person shall not advertise, sell, promote, or offer  
8 4 to furnish cemetery merchandise, funeral merchandise, funeral  
8 5 services, or a combination thereof when performance or  
8 6 delivery may be more than one hundred twenty days following  
8 7 the initial payment on the account without ~~an establishment~~  
8 8 ~~permit a preneed seller's license. Each establishment must~~  
8 9 ~~have an establishment permit.~~  
8 10 2. An application for ~~an establishment permit a preneed~~  
8 11 ~~seller's license~~ shall be filed on a form prescribed by the  
8 12 commissioner, ~~and be accompanied by a fifty dollar filing fee,~~  
8 13 ~~and include a copy of each purchase agreement the person will~~  
8 14 ~~use for sales of cemetery merchandise, funeral merchandise,~~  
8 15 ~~funeral services, or a combination thereof.~~  
8 16 3. ~~The application shall contain:~~  
8 17 a. ~~The name and address of the establishment.~~  
8 18 b. ~~The name and address of any additional provider of~~  
8 19 ~~cemetery merchandise, funeral merchandise, funeral services,~~  
8 20 ~~or a combination thereof.~~  
8 21 c. ~~The name and address of each owner, officer, or other~~  
8 22 ~~official of the establishment, including when relevant the~~  
8 23 ~~chief executive officer and the members of the board of~~  
8 24 ~~directors.~~  
8 25 d. ~~A description of any common business enterprise or~~  
8 26 ~~parent company.~~  
8 27 e. ~~The types of cemetery merchandise, funeral merchandise,~~  
8 28 ~~funeral services, or a combination thereof to be sold.~~  
8 29 f. ~~The types of trust or trust alternatives utilized by~~  
8 30 ~~the establishment and a list of the financial institutions,~~  
8 31 ~~storage facilities, surety companies, and insurance companies~~  
8 32 ~~utilized by the establishment on a regular basis.~~  
8 33 4. A permit holder shall inform the commissioner of  
8 34 changes in the information required to be provided by  
8 35 subsection 3 within thirty days of the change.  
9 1 3. a. The commissioner shall request and obtain,  
9 2 notwithstanding section 692.2, subsection 5, criminal history  
9 3 data for any applicant for an initial license issued pursuant  
9 4 to this section, any applicant for reinstatement of a license  
9 5 issued pursuant to this section, or any licensee who is being  
9 6 monitored as a result of a commission order or agreement  
9 7 resolving an administrative disciplinary action, for the  
9 8 purpose of evaluating the applicant's or licensee's  
9 9 eligibility for licensure or suitability for continued  
9 10 practice as a preneed seller. The commissioner shall adopt  
9 11 rules pursuant to chapter 17A to implement this section. The  
9 12 commissioner shall inform the applicant or licensee of the  
9 13 criminal history requirement and obtain a signed waiver from  
9 14 the applicant or licensee prior to submitting a criminal  
9 15 history data request.  
9 16 b. A request for criminal history data shall be submitted  
9 17 to the department of public safety, division of criminal  
9 18 investigation, pursuant to section 692.2, subsection 1. The  
9 19 commissioner may also require such applicants or licensees to  
9 20 provide a full set of fingerprints, in a form and manner  
9 21 prescribed by the commission. Such fingerprints may be  
9 22 submitted to the federal bureau of investigation through the  
9 23 state criminal history repository for a national criminal  
9 24 history check. The commissioner may authorize alternate  
9 25 methods or sources for obtaining criminal history record  
9 26 information. The commissioner may, in addition to any other  
9 27 fees, charge and collect such amounts as may be incurred by  
9 28 the commissioner, the department of public safety, or the  
9 29 federal bureau of investigation in obtaining criminal history  
9 30 information. Amounts collected shall be considered repayment  
9 31 receipts as defined in section 8.2.  
9 32 c. Criminal history information relating to an applicant  
9 33 or licensee obtained by the commissioner pursuant to this  
9 34 section is confidential. The commissioner may, however, use  
9 35 such information in a license denial proceeding.  
10 1 4. The commissioner shall request and obtain a financial

10 2 history for any applicant for an initial license issued  
10 3 pursuant to this section, any applicant for reinstatement of a  
10 4 license issued pursuant to this section, or any licensee who  
10 5 is being monitored as a result of a commission order or  
10 6 agreement resolving an administrative disciplinary action, for  
10 7 the purpose of evaluating the applicant's or licensee's  
10 8 eligibility for licensure or suitability for continued  
10 9 practice as a preneed seller. "Financial history" means the  
10 10 record of a person's current loans, the date of a person's  
10 11 loans, the amount of the loans, the person's payment record on  
10 12 the loans, current liens against the person's property, and  
10 13 the person's most recent financial statement setting forth the  
10 14 assets, liabilities, and the net worth of the person.

10 15 5. ~~An establishment permit~~ A preneed seller's license is  
10 16 not assignable or transferable. A permit holder licensee  
10 17 selling all or part of ~~an establishment~~ a business entity that  
10 18 has a preneed seller's license shall cancel the permit  
10 19 license, and the purchaser shall apply for a new permit  
10 20 license in the purchaser's name within thirty days of the  
10 21 sale.

10 22 6. If no denial order is in effect and no proceeding is  
10 23 pending under section 523A.503, the application becomes  
10 24 effective at noon of the thirtieth day after a completed  
10 25 application or an amendment completing the application is  
10 26 filed, unless waived by the applicant. The commissioner may  
10 27 specify an earlier effective date. Automatic effectiveness  
10 28 under this subsection shall not be deemed approval of the  
10 29 application. If the commissioner does not grant the permit  
10 30 license, the commissioner shall notify the person in writing  
10 31 of the reasons for the denial.

10 32 7. ~~An initial permit is valid for two years from the date~~  
10 33 ~~the application is filed. A permit may preneed seller's~~  
10 34 ~~license shall be renewed for two every four years by filing~~  
10 35 ~~the form prescribed by the commissioner under subsection 2,~~  
11 1 ~~accompanied by a ten dollar renewal fee in an amount set by~~  
11 2 ~~the commissioner by rule. Submission of purchase agreements~~  
11 3 ~~is not required for renewals unless the purchase agreements~~  
11 4 ~~have been modified since the last filing.~~

11 5 8. The commissioner may by rule create or accept a  
11 6 multijurisdiction ~~establishment permit preneed seller's~~  
11 7 ~~license. If the establishment permit preneed seller's license~~  
11 8 ~~is issued by another jurisdiction, the rules shall require the~~  
11 9 ~~filing of an application or notice form and payment of the~~  
11 10 ~~applicable filing fee of fifty dollars for an initial~~  
11 11 ~~application and ten dollars for a renewal application. The~~  
11 12 ~~application or notice form utilized and the effective dates~~  
11 13 ~~and terms of the permit license may vary from the provisions~~  
11 14 ~~set forth in subsections 2, 3, and 7 this section.~~

11 15 Sec. 17. Section 523A.502, Code 2007, is amended to read  
11 16 as follows:

11 17 523A.502 SALES PERMITS AGENTS == LICENSES.

11 18 1. A person shall not advertise, sell, promote, or offer  
11 19 to furnish cemetery merchandise, funeral merchandise, funeral  
11 20 services, or a combination thereof when performance or  
11 21 delivery may be more than one hundred twenty days following  
11 22 initial payment on the account ~~without unless the person has a~~  
11 23 ~~sales permit. A permit holder must be an employee or license~~  
11 24 ~~and is a sales agent of a person holding an establishment~~  
11 25 ~~permit who can deliver the cemetery merchandise, funeral~~  
11 26 ~~merchandise, funeral services, or a combination thereof being~~  
11 27 ~~sold a preneed seller's license. A person must have a sales~~  
11 28 ~~permit for each establishment at which the person works.~~  
11 29 ~~However, a person may apply for a sales permit covering~~  
11 30 ~~multiple establishments, if the establishments have common~~  
11 31 ~~ownership. The establishment permit holder preneed seller~~  
11 32 ~~licensee is liable for the acts of its employees and sales~~  
11 33 ~~agents performed in advertising, selling, promoting, or~~  
11 34 ~~offering to furnish, upon the future death of a person named~~  
11 35 ~~or implied in a purchase agreement, cemetery merchandise,~~  
12 1 ~~funeral merchandise, funeral services, or a combination~~  
12 2 ~~thereof.~~

12 3 2. This chapter does not permit a person to practice  
12 4 mortuary science without a license. A person holding a  
12 5 current sales ~~permit license~~ may advertise, sell, promote, or  
12 6 offer to furnish a funeral director's services as an employee  
12 7 or agent of a funeral establishment furnishing the funeral  
12 8 services under chapter 156.

12 9 3. An application for a sales ~~permit license~~ shall be  
12 10 filed on a form prescribed by the commissioner and be  
12 11 accompanied by a ~~five dollar~~ filing fee ~~in an amount set by~~  
12 12 ~~the commissioner by rule.~~

12 13 4. ~~The application shall contain:~~  
12 14 a. ~~The name and address of the person.~~  
12 15 b. ~~The name and address of the person's employer and each~~  
12 16 ~~establishment on whose behalf the person will be advertising,~~  
12 17 ~~selling, promoting, or offering to furnish cemetery~~  
12 18 ~~merchandise, funeral merchandise, funeral services, or a~~  
12 19 ~~combination thereof.~~  
12 20 c. ~~The name and address of the provider who will provide~~  
12 21 ~~the cemetery merchandise, funeral merchandise, funeral~~  
12 22 ~~services, or a combination thereof if different from the~~  
12 23 ~~person's employer.~~  
12 24 4. a. The commissioner shall request and obtain,  
12 25 notwithstanding section 692.2, subsection 5, criminal history  
12 26 data for any applicant for an initial license issued pursuant  
12 27 to this section, any applicant for reinstatement of a license  
12 28 issued pursuant to this section, or any licensee who is being  
12 29 monitored as a result of a commission order or agreement  
12 30 resolving an administrative disciplinary action, for the  
12 31 purpose of evaluating the applicant's or licensee's  
12 32 eligibility for licensure or suitability for continued  
12 33 practice as a sales agent. The commissioner shall adopt rules  
12 34 pursuant to chapter 17A to implement this section. The  
12 35 commissioner shall inform the applicant or licensee of the  
13 1 criminal history requirement and obtain a signed waiver from  
13 2 the applicant or licensee prior to submitting a criminal  
13 3 history data request.  
13 4 b. A request for criminal history data shall be submitted  
13 5 to the department of public safety, division of criminal  
13 6 investigation, pursuant to section 692.2, subsection 1. The  
13 7 commissioner may also require such applicants or licensees, to  
13 8 provide a full set of fingerprints, in a form and manner  
13 9 prescribed by the commission. Such fingerprints may be  
13 10 submitted to the federal bureau of investigation through the  
13 11 state criminal history repository for a national criminal  
13 12 history check. The commissioner may authorize alternate  
13 13 methods or sources for obtaining criminal history record  
13 14 information. The commissioner may, in addition to any other  
13 15 fees, charge and collect such amounts as may be incurred by  
13 16 the commissioner, the department of public safety, or the  
13 17 federal bureau of investigation in obtaining criminal history  
13 18 information. Amounts collected shall be considered repayment  
13 19 receipts as defined in section 8.2.  
13 20 c. Criminal history information relating to an applicant  
13 21 or licensee obtained by the commissioner pursuant to this  
13 22 section is confidential. The commissioner may, however, use  
13 23 such information in a license denial proceeding.  
13 24 5. ~~An initial permit expires one year from the date the~~  
13 25 ~~application is filed. The permit may sales license shall be~~  
13 26 ~~renewed for every four years by filing the form prescribed by~~  
13 27 ~~the commissioner under subsection 3, accompanied by a twenty~~  
13 28 ~~dollar filing renewal fee in an amount set by the commissioner~~  
13 29 ~~by rule.~~  
13 30 6. A sales agent licensed pursuant to this section shall  
13 31 satisfactorily fulfill continuing education requirements for  
13 32 the license as prescribed by the commissioner by rule.  
13 33 6. 7. ~~A permit holder sales licensee shall inform the~~  
13 34 ~~commissioner of changes in the information required to be~~  
13 35 ~~provided by subsection 4 in the application within thirty days~~  
14 1 ~~of the change.~~  
14 2 7. 8. ~~A sales permit license is not assignable or~~  
14 3 ~~transferable. An establishment selling all or part of its~~  
14 4 ~~business to a purchaser shall cancel the establishment's sales~~  
14 5 ~~permit. The purchaser shall apply for a new sales permit in~~  
14 6 ~~the purchaser's name within thirty days of the sale.~~  
14 7 8. 9. ~~If no denial order is in effect and no proceeding~~  
14 8 ~~is pending under section 523A.503, the application becomes~~  
14 9 ~~effective at noon of the thirtieth day after a completed~~  
14 10 ~~application or an amendment completing the application is~~  
14 11 ~~filed, unless waived by the applicant. The commissioner may~~  
14 12 ~~specify an earlier effective date. Automatic effectiveness~~  
14 13 ~~under this subsection shall not be deemed approval of the~~  
14 14 ~~application. If the commissioner does not grant the permit~~  
14 15 ~~license, the commissioner shall notify the applicant in~~  
14 16 ~~writing of the reasons for the denial.~~  
14 17 9. 10. ~~The commissioner may by rule create or accept a~~  
14 18 ~~multijurisdiction sales permit license. If the sales permit~~  
14 19 ~~license is issued by another jurisdiction, the rules shall~~  
14 20 ~~require the filing of an application or notice form and~~  
14 21 ~~payment of the applicable filing fee of five dollars for each~~  
14 22 ~~year. The application or notice form utilized and the~~  
14 23 ~~effective dates and terms of the permit license may vary from~~

14 24 the provisions set forth in subsections 3 and 5.

14 25 Sec. 18. NEW SECTION. 523A.502A SALES AGENT ANNUAL  
14 26 REPORTING REQUIREMENTS.

14 27 1. A sales agent shall file with the commissioner not  
14 28 later than April 1 of each year an annual report on a form  
14 29 prescribed by the commissioner describing each purchase  
14 30 agreement sold by the sales agent during the year.

14 31 2. All records maintained by the commissioner under this  
14 32 section shall be confidential pursuant to section 22.7,  
14 33 subsection 58, and shall not be made available for inspection  
14 34 or copying except upon the approval of the commissioner or the  
14 35 attorney general.

15 1 3. The commissioner shall levy an administrative penalty  
15 2 in the amount of five hundred dollars against a sales agent  
15 3 who fails to file an annual report when due, payable to the  
15 4 state for deposit in the general fund.

15 5 4. A sales agent who fails to file the annual report when  
15 6 due shall immediately cease soliciting or executing purchase  
15 7 agreements until the annual report is filed and any  
15 8 administrative penalty assessed has been paid.

15 9 Sec. 19. Section 523A.503, Code 2007, is amended to read  
15 10 as follows:

15 11 523A.503 DENIAL, SUSPENSION, REVOCATION, AND SURRENDER OF  
15 12 PERMITS LICENSES.

15 13 1. The commissioner may, pursuant to chapter 17A, deny any  
15 14 permit license application, or immediately suspend, revoke, or  
15 15 otherwise impose disciplinary action related to any permit  
15 16 license issued under ~~this chapter~~ section 523A.501 or 523A.502  
15 17 for several reasons, including but not limited to:

15 18 a. Committing a fraudulent act, engaging in a fraudulent  
15 19 practice, or violating any provision of this chapter or any  
15 20 implementing rule or order issued under this chapter.

15 21 b. Violating any other state or federal law applicable to  
15 22 the conduct of the applicant's or ~~permit holder's~~ licensee's  
15 23 business.

15 24 c. Insolvency or financial condition.

15 25 d. The ~~permit holder~~ licensee, for the purpose of avoiding  
15 26 the trust requirement for funeral services, attributes amounts  
15 27 paid under the purchase agreement to cemetery merchandise or  
15 28 funeral merchandise that is delivered under section 523A.404  
15 29 rather than to funeral services sold to the purchaser. The  
15 30 sale of funeral services at a lower price when the sale is  
15 31 made in conjunction with the sale of cemetery merchandise or  
15 32 funeral merchandise to be delivered under section 523A.404  
15 33 than the services are regularly and customarily sold for when  
15 34 not sold in conjunction with cemetery merchandise or funeral  
15 35 merchandise is evidence that the ~~permit holder~~ licensee is  
16 1 acting with the purpose of avoiding the trust requirement for  
16 2 funeral services under section 523A.201.

16 3 e. Engaging in a deceptive act or practice or deliberately  
16 4 misrepresenting or omitting a material fact regarding the sale  
16 5 of cemetery merchandise, funeral merchandise, funeral  
16 6 services, or a combination thereof under this chapter.

16 7 f. Conviction of a criminal offense involving dishonesty  
16 8 or a false statement including but not limited to fraud,  
16 9 theft, misappropriation of funds, falsification of documents,

16 10 deceptive acts or practices, or other related offenses.

16 11 g. Inability to provide the cemetery merchandise, funeral  
16 12 merchandise, funeral services, or a combination thereof which  
16 13 the applicant or ~~permit holder~~ licensee purports to sell.

16 14 h. The applicant or ~~permit holder~~ licensee sells the  
16 15 business without filing a prior notice of sale with the  
16 16 commissioner. The permit license shall be revoked thirty days  
16 17 following such sale.

16 18 i. Selling by a person who is not ~~an employee or agent of~~  
16 19 ~~the applicant or permit holder~~ a licensed sales agent.

16 20 j. The applicant or licensee is named in an order issued  
16 21 pursuant to section 523A.807, subsection 3, paragraph "b".

16 22 2. The commissioner may, for good cause shown, suspend any  
16 23 permit license for a period not exceeding thirty days, pending  
16 24 investigation.

16 25 3. Except as provided in subsection 2, a permit license  
16 26 shall not be revoked, suspended, or otherwise be the subject  
16 27 of disciplinary action except after notice and hearing under  
16 28 chapter 17A.

16 29 4. Any ~~permit holder~~ licensee may surrender a permit  
16 30 license by delivering to the commissioner written notice that  
16 31 the ~~permit holder~~ licensee surrenders the permit license, but  
16 32 the surrender shall not affect the ~~permit holder's~~ licensee's  
16 33 civil or criminal liability for acts committed before the  
16 34 surrender.

16 35 5. Denial, revocation, suspension, or surrender of a  
17 1 ~~permit license~~ does not impair or affect the obligation of any  
17 2 preexisting lawful agreement between the ~~permit holder~~  
17 3 ~~licensee~~ and any person.

17 4 ~~6. The commissioner may impose a civil penalty in an~~  
17 5 ~~amount not exceeding ten thousand dollars per violation~~  
17 6 ~~against any person violating this chapter. Each day of a~~  
17 7 ~~continuing violation constitutes a separate offense.~~

17 8 Sec. 20. NEW SECTION. 523A.504 APPOINTMENT OF SALES  
17 9 AGENTS.

17 10 1. A person shall not sell or offer to furnish cemetery  
17 11 merchandise, funeral merchandise, funeral services, or a  
17 12 combination thereof when performance or delivery may be more  
17 13 than one hundred twenty days following initial payment on the  
17 14 account except through a sales agent who holds a sales license  
17 15 issued pursuant to section 523A.502. If a person holding a  
17 16 preneed seller's license appoints a sales agent to act on  
17 17 behalf of the preneed seller, the person shall file a notice  
17 18 of such appointment with the commissioner within thirty days  
17 19 of the appointment, in a format approved by the commissioner,  
17 20 and annually thereafter.

17 21 2. A preneed seller shall pay an annual fee of five  
17 22 dollars for each sales agent appointed by the preneed seller,  
17 23 which fee shall be submitted with the annual report.

17 24 Sec. 21. Section 523A.601, subsection 1, paragraph a, Code  
17 25 2007, is amended to read as follows:

17 26 a. Identify the ~~seller preneed seller by name and license~~  
17 27 ~~number, the salesperson's permit and establishment sales agent~~  
17 28 ~~by name and permit license number, the expiration date of the~~  
17 29 ~~salesperson's permit, the purchaser, and the person for whom~~  
17 30 the cemetery merchandise, funeral merchandise, funeral  
17 31 services, or a combination thereof is purchased, if other than  
17 32 the purchaser.

17 33 Sec. 22. Section 523A.601, Code 2007, is amended by adding  
17 34 the following new subsection:

17 35 NEW SUBSECTION. 6. a. A purchase agreement that is  
18 1 funded by a trust shall include a conspicuous statement in  
18 2 language substantially similar to the following language:  
18 3 "For your prearranged funeral agreement, we will deposit  
18 4 not less than eighty percent of your payments in trust at  
18 5 (name of financial institution), (street address), (city),  
18 6 (state) (zip code) within fifteen days following receipt of  
18 7 the funds. For your protection, you have the right to contact  
18 8 the financial institution directly to confirm that the deposit  
18 9 of these funds occurred as required by law. If you are unable  
18 10 to confirm the deposit of these funds in trust, you may  
18 11 contact the Iowa insurance division for assistance by calling  
18 12 the insurance division at (telephone number) or by mail at  
18 13 (street address), (city), Iowa (zip code)."

18 14 b. A purchase agreement that is funded with an insurance  
18 15 policy or an annuity shall include a conspicuous statement in  
18 16 language substantially similar to the following language:

18 17 "An (insurance policy or annuity) will be purchased from  
18 18 (name of issuer of the policy or annuity), (street address),  
18 19 (city), (state) (zip code). You should receive confirmation  
18 20 of the purchase of an insurance policy or certificate, or an  
18 21 annuity within sixty days of making payment. Delivery of the  
18 22 actual insurance policy or certificate or annuity shall also  
18 23 constitute confirmation. For your protection, you have the  
18 24 right to confirm that the insurance policy or annuity is  
18 25 issued as required by law. If you do not receive confirmation  
18 26 that an insurance policy or certificate or an annuity has been  
18 27 purchased or receive the insurance policy or certificate or  
18 28 the annuity, you should report this fact to the Iowa insurance  
18 29 division, by calling the insurance division at (telephone  
18 30 number). Written reports should be mailed to the Iowa  
18 31 insurance division at (street address), (city), Iowa (zip  
18 32 code)."

18 33 c. A purchase agreement that is funded with a surety bond  
18 34 shall include a conspicuous statement in language  
18 35 substantially similar to the following language:

19 1 "Coverage under a surety bond in the amount of \$(amount)  
19 2 will be purchased from (name of issuer of surety bond),  
19 3 (street address), (city), (state) (zip code) to fund your  
19 4 purchase. If you pay pursuant to your purchase agreement with  
19 5 a single payment, you should receive confirmation of the  
19 6 purchase of a surety bond within sixty days of making the  
19 7 payment. If you pay pursuant to your purchase agreement with  
19 8 multiple, periodic payments, you should receive confirmation  
19 9 of the purchase of a surety bond within sixty days of making  
19 10 the first payment and within sixty days of making the last



19 11 payment pursuant to the agreement. For your protection, you  
19 12 have the right to confirm that the surety bond is issued as  
19 13 required by law. If you do not receive confirmation of  
19 14 coverage under a surety bond within sixty days of making the  
19 15 first payment and within sixty days of making the last  
19 16 payment, you should report this fact to the Iowa insurance  
19 17 division, by calling the insurance division at (telephone  
19 18 number). Written reports should be mailed to the Iowa  
19 19 insurance division at (street address), (city), Iowa (zip  
19 20 code)."

19 21 Sec. 23. NEW SECTION. 523A.603 SECURITY AND NOTICE  
19 22 REQUIREMENTS.

19 23 1. If a purchase agreement is funded with an insurance  
19 24 policy or an annuity, the purchaser shall receive a notice  
19 25 thereof from the insurance company within sixty days of making  
19 26 payment. The notice shall include the name and address of the  
19 27 insurance company, the policy number of the insurance policy  
19 28 that secures the agreement, the name of the insured under the  
19 29 insurance policy or annuity, and the amount of the accumulated  
19 30 death benefit. Delivery of the insurance policy or  
19 31 certificate or annuity shall satisfy this notice requirement.

19 32 2. If a purchase agreement is funded by a surety bond, the  
19 33 purchaser shall receive a notice from the surety company that  
19 34 evidences coverage under the bond, the name of the purchaser  
19 35 or beneficiary, and the amount of coverage. If the purchase  
20 1 agreement is paid with a single payment, the purchaser shall  
20 2 receive notice of the surety bond within sixty days of making  
20 3 the payment. If the purchase agreement is being paid with  
20 4 multiple, periodic payments, the purchaser shall receive  
20 5 notice of the surety bond within sixty days of making the last  
20 6 payment. Compliance with this notice requirement does not  
20 7 require a seller to purchase individual surety bonds for each  
20 8 purchaser and beneficiary. A seller may file a single bond  
20 9 with the commissioner.

20 10 Sec. 24. NEW SECTION. 523A.604 PURCHASE AGREEMENTS ==  
20 11 NUMBERING.

20 12 Purchase agreements for cemetery merchandise, funeral  
20 13 merchandise, funeral services, or a combination thereof shall  
20 14 be sequentially numbered by each seller in compliance with  
20 15 procedures specified by the commissioner by rules adopted  
20 16 under chapter 17A.

20 17 Sec. 25. Section 523A.703, Code 2007, is amended to read  
20 18 as follows:

20 19 523A.703 FRAUDULENT PRACTICES.

20 20 ~~A~~ Except as otherwise provided in section 523A.704, a  
20 21 person who willfully commits any of the following acts commits  
20 22 a fraudulent practice and is punishable as provided in chapter  
20 23 714:

20 24 1. ~~Knowingly fails~~ Fails to comply with any requirement of  
20 25 this chapter, ~~or any rule adopted or order issued under this~~  
20 26 ~~chapter.~~

20 27 2. ~~Knowingly makes~~ Makes, causes to be made, or subscribes  
20 28 to a false statement or representation in a report or other  
20 29 document required under this chapter, implementing rules, or  
20 30 orders, or renders such a report or document misleading  
20 31 through the deliberate omission of information properly  
20 32 belonging in the report or document.

20 33 3. ~~Conspires to defraud in~~ In connection with the sale of  
20 34 cemetery merchandise, funeral merchandise, funeral services,  
20 35 or a combination thereof ~~under this chapter, directly or~~  
21 1 ~~indirectly makes an untrue statement of a material fact or~~  
21 2 ~~omits to state a material fact that is necessary to make the~~  
21 3 ~~statements made, in light of the circumstances under which~~  
21 4 ~~they were made, not misleading.~~

21 5 4. ~~Fails to deposit funds under sections 523A.201 and~~  
21 6 ~~523A.202 or withdraws any funds in a manner inconsistent with~~  
21 7 ~~this chapter. Unless the purchase agreement expressly~~  
21 8 ~~provides otherwise, excludes in the sale of cemetery~~  
21 9 ~~merchandise, funeral merchandise, or a combination thereof,~~  
21 10 ~~funeral services that are necessary for the delivery, use, or~~  
21 11 ~~installation of the cemetery merchandise or funeral~~  
21 12 ~~merchandise at the time of the burial or funeral.~~

21 13 5. ~~Knowingly sells or offers cemetery merchandise, funeral~~  
21 14 ~~merchandise, funeral services, or a combination thereof~~  
21 15 ~~without an establishment permit.~~

21 16 6. ~~Deliberately misrepresents or omits a material fact~~  
21 17 ~~relative to the sale of cemetery merchandise, funeral~~  
21 18 ~~merchandise, funeral services, or a combination thereof under~~  
21 19 ~~this chapter. When selling cemetery merchandise or funeral~~  
21 20 ~~merchandise, a seller shall not exclude the funeral services~~  
21 21 ~~necessary for the delivery, use, or installation of the~~

~~21 22 cemetery merchandise or funeral merchandise at the time of the~~  
~~21 23 funeral or burial unless the purchase agreement expressly~~  
~~21 24 provides otherwise.~~

21 25 Sec. 26. NEW SECTION. 523A.704 VIOLATIONS.

21 26 A person who willfully violates section 523A.501,  
21 27 subsection 1, or section 523A.502, subsection 1, is guilty of  
21 28 a class "D" felony.

21 29 Sec. 27. Section 523A.801, subsection 1, Code 2007, is  
21 30 amended to read as follows:

21 31 1. This chapter shall be administered by the commissioner.

~~21 32 The deputy administrator appointed pursuant to section 502.601~~

~~21 33 shall be the principal operations officer responsible to the~~

~~21 34 commissioner for the routine administration of this chapter~~

~~21 35 and management of the administrative staff. In the absence of~~

~~22 1 the commissioner, whether because of vacancy in the office due~~

~~22 2 to absence, physical disability, or other cause, the deputy~~

~~22 3 administrator shall, for the time being, have and exercise the~~

~~22 4 authority conferred upon the commissioner. The commissioner~~

~~22 5 may by order from time to time delegate to the deputy~~

~~22 6 administrator any or all of the functions assigned to the~~

~~22 7 commissioner in this chapter. The deputy administrator shall~~

22 8 employ officers, attorneys, accountants, and other employees

22 9 as needed for administering this chapter.

22 10 Sec. 28. Section 523A.801, Code 2007, is amended by adding  
22 11 the following new subsection:

22 12 NEW SUBSECTION. 3. The commissioner shall submit an

22 13 annual report to the legislative oversight committee by

22 14 October 1 of each year reporting on the administration of this

22 15 chapter. The report shall set forth any recommendations for

22 16 changes in the law that the commissioner deems necessary or

22 17 desirable to prevent abuses or evasions of this chapter or

22 18 rules implementing this chapter or to rectify undesirable

22 19 conditions in connection with the administration of this

22 20 chapter or rules implementing this chapter.

22 21 Sec. 29. Section 523A.807, Code 2007, is amended by adding  
22 22 the following new subsections:

22 23 NEW SUBSECTION. 3. If the commissioner finds that a

22 24 person has violated section 523A.201, 523A.202, 523A.401,

22 25 523A.402, 523A.403, 523A.404, 523A.405, 523A.501, or 523A.502

22 26 or any rule adopted pursuant thereto, the commissioner may

22 27 order any or all of the following:

22 28 a. Payment of a civil penalty of not more than one

22 29 thousand dollars for each violation, but not exceeding an

22 30 aggregate of ten thousand dollars during any six-month period,

22 31 except that if the commissioner finds that the person knew or

22 32 reasonably should have known that the person was in violation

22 33 of such provisions or rules adopted thereto, the penalty shall

22 34 be not more than five thousand dollars for each violation, but

22 35 not exceeding an aggregate of fifty thousand dollars during

23 1 any six-month period. The commissioner shall assess the

23 2 penalty on the employer of an individual and not on the

23 3 individual, if the commissioner finds that the violations

23 4 committed by the individual were directed, encouraged,

23 5 condoned, ignored, or ratified by the individual's employer.

23 6 b. Issuance of an order prohibiting the person committing

23 7 a violation from selling funeral merchandise, cemetery

23 8 merchandise, funeral services, or a combination thereof, and

23 9 from managing, operating, or otherwise exercising control over

23 10 any business entity that is subject to regulation under this

23 11 chapter or chapter 523I. A person who has been named in such

23 12 an order may contest the order by filing a request for a

23 13 contested case proceeding as provided in chapter 17A and in

23 14 accordance with rules adopted by the commissioner. The

23 15 commissioner may, pursuant to chapter 17A, deny any

23 16 application filed under section 523A.501 or 523A.502 if the

23 17 applicant, or an officer, director, or owner of the applicant

23 18 is named in a final order issued pursuant to this subsection.

23 19 NEW SUBSECTION. 4. The commissioner shall post on the

23 20 website of the division of insurance of the department of

23 21 commerce a list of all persons licensed under chapter 523A and

23 22 an index of orders issued by the commissioner pertaining to

23 23 such persons.

23 24 Sec. 30. Section 523A.811, subsection 1, Code 2007, is

23 25 amended by adding the following new paragraph:

23 26 NEW PARAGRAPH. f. A receivership has been established for

23 27 a cemetery subject to chapter 523I that is owned or operated

23 28 by a seller who is subject to this chapter.

23 29 Sec. 31. Section 523A.811, Code 2007, is amended by adding

23 30 the following new subsection:

23 31 NEW SUBSECTION. 3. If a seller who is subject to this

23 32 chapter owns or operates a cemetery subject to chapter 523I,

23 33 for which a receivership has been established, the  
23 34 receivership provisions of section 523I.212 shall apply to any  
23 35 receivership established under this section.

24 1 Sec. 32. Section 523A.812, Code 2007, is amended to read  
24 2 as follows:

24 3 523A.812 INSURANCE DIVISION REGULATORY FUND.

24 4 The insurance division may authorize the creation of a  
24 5 special revenue fund in the state treasury, to be known as the  
24 6 insurance division regulatory fund. The commissioner shall  
24 7 allocate annually from the fees paid pursuant to section  
24 8 523A.204, two dollars for each purchase agreement reported on  
24 9 ~~an establishment permit holder's a preneed seller's~~ annual  
24 10 report filed pursuant to section 523A.204 for deposit to the  
24 11 regulatory fund. The remainder of the fees collected pursuant  
24 12 to section 523A.204 shall be deposited into the general fund  
24 13 of the state. The commissioner shall also allocate annually  
24 14 the audit examination fees paid pursuant to section 523A.814  
24 15 and any examination expense reimbursement for deposit to the  
24 16 regulatory fund. The moneys in the regulatory fund shall be  
24 17 retained in the fund. The moneys are appropriated and,  
24 18 subject to authorization by the commissioner, may be used to  
24 19 pay auditors, audit examiners, examination expenses,  
24 20 investigative expenses, the expenses of mediation ordered by  
24 21 the commissioner, consumer education expenses, the expenses of  
24 22 a toll-free telephone line to receive consumer complaints, and  
24 23 the expenses of receiverships established under section  
24 24 523A.811. If the commissioner determines that funding is not  
24 25 otherwise available to reimburse the expenses of a person who  
24 26 receives title to a cemetery subject to chapter 523I, pursuant  
24 27 to such a receivership, the commissioner shall use moneys in  
24 28 the regulatory fund as necessary to preserve, protect,  
24 29 restore, and maintain the physical integrity of that cemetery  
24 30 and to satisfy claims or demands for cemetery merchandise,  
24 31 funeral merchandise, and funeral services based on purchase  
24 32 agreements which the commissioner determines are just and  
24 33 outstanding. An annual allocation to the regulatory fund  
24 34 shall not be imposed if the current balance of the fund  
24 35 exceeds two five hundred thousand dollars.

25 1 Sec. 33. Section 523A.814, Code 2007, is amended to read  
25 2 as follows:

25 3 523A.814 AUDIT EXAMINATION FEE.

25 4 In addition to the filing fee paid pursuant to section  
25 5 523A.204, subsection 5 2, an establishment a seller filing an  
25 6 annual report shall pay an audit examination fee in the amount  
25 7 of five dollars for each purchase agreement subject to a  
25 8 filing fee that is sold between July 1, 2005, and December 31,  
25 9 2007, and in the amount of ten dollars for each purchase  
25 10 agreement subject to a filing fee that is sold after December  
25 11 31, 2007.

25 12 Sec. 34. Section 523I.102, subsections 3 and 8, Code 2007,  
25 13 are amended to read as follows:

25 14 3. "Capital gains" means appreciation in the value of  
25 15 trust assets for which a market value may be determined with  
25 16 reasonable certainty after deduction of investment losses,  
25 17 taxes, expenses incurred in the sale of trust assets, any  
25 18 costs of the operation of the trust, examination expenses, and  
25 19 any annual audit fees expenses.

25 20 8. "Commissioner" means the commissioner of insurance or  
25 21 the deputy administrator authorized in section 523A.801 to the  
25 22 extent the commissioner delegates functions to the deputy  
25 23 administrator commissioner's designee authorized in section  
25 24 523A.801.

25 25 Sec. 35. Section 523I.102, subsection 17, unnumbered  
25 26 paragraph 1, Code 2007, is amended to read as follows:

25 27 "Income" means the return in money or property derived from  
25 28 the use of trust principal after deduction of investment  
25 29 losses, taxes, and expenses incurred in the sale of trust  
25 30 assets, any cost of the operation of the trust, examination  
25 31 expenses or fees, and any annual audit fees expenses.

25 32 "Income" includes but is not limited to:

25 33 Sec. 36. Section 523I.201, subsection 1, Code 2007, is  
25 34 amended to read as follows:

25 35 1. This chapter shall be administered by the commissioner.  
26 1 ~~The deputy administrator appointed pursuant to section 502.601~~  
26 2 ~~shall be the principal operations officer responsible to the~~  
26 3 ~~commissioner for the routine administration of this chapter~~  
26 4 ~~and management of the administrative staff. In the absence of~~  
26 5 ~~the commissioner, whether because of vacancy in the office due~~  
26 6 ~~to absence, physical disability, or other cause, the deputy~~  
26 7 ~~administrator shall, for the time being, have and exercise the~~  
26 8 ~~authority conferred upon the commissioner. The commissioner~~

26 9 may by order from time to time delegate to the deputy  
26 10 administrator any or all of the functions assigned to the  
26 11 commissioner in this chapter. The deputy administrator shall  
26 12 employ officers, attorneys, accountants, and other employees  
26 13 as needed for administering this chapter.  
26 14 Sec. 37. Section 523I.201, Code 2007, is amended by adding  
26 15 the following new subsection:  
26 16 NEW SUBSECTION. 3. The commissioner shall submit an  
26 17 annual report to the legislative oversight committee by  
26 18 October 1 of each year reporting on the administration of this  
26 19 chapter. The report shall set forth any recommendations for  
26 20 changes in the law that the commissioner deems necessary or  
26 21 desirable to prevent abuses or evasions of this chapter or  
26 22 rules implementing this chapter or to rectify undesirable  
26 23 conditions in connection with the administration of this  
26 24 chapter or rules implementing this chapter.  
26 25 Sec. 38. Section 523I.212, subsection 1, Code 2007, is  
26 26 amended by adding the following new paragraph:  
26 27 NEW PARAGRAPH. d. A receivership has been established for  
26 28 a seller subject to chapter 523A who owns or operates a  
26 29 cemetery that is subject to this chapter.  
26 30 Sec. 39. Section 523I.212, subsection 2, Code 2007, is  
26 31 amended to read as follows:  
26 32 2. The commissioner or attorney general may apply to the  
26 33 district court in any county of the state for the  
26 34 establishment of a receivership. Upon proof that any of the  
26 35 conditions described in this section have occurred, the court  
27 1 may grant a receivership. The commissioner may request that  
27 2 the insurance division be named as a receiver or that the  
27 3 court appoint a third party as a receiver. If the division is  
27 4 appointed as a receiver, the division shall not be subject to  
27 5 the requirements concerning an oath and surety bond contained  
27 6 in section 680.3.  
27 7 Sec. 40. Section 523I.212, Code 2007, is amended by adding  
27 8 the following new subsections:  
27 9 NEW SUBSECTION. 3. In addition to the powers granted to  
27 10 receivers under chapter 680, a receiver appointed under this  
27 11 section shall be granted all powers necessary to locate and to  
27 12 temporarily preserve and protect perpetual care trust funds,  
27 13 consumer and business assets, interment records, records of  
27 14 consumer purchases of interment rights, and records of  
27 15 consumer purchases of funeral services and funeral or cemetery  
27 16 merchandise as defined in chapter 523A. The receiver shall  
27 17 also be granted such powers as are necessary in the course of  
27 18 the receivership to temporarily preserve and protect a  
27 19 cemetery or burial site and to temporarily restore or sustain  
27 20 cemetery operations, including interments, as operating funds  
27 21 or trust funds become available.  
27 22 NEW SUBSECTION. 4. The commissioner may petition the  
27 23 court to terminate a receivership at any time and to enter  
27 24 such orders as are necessary to transfer the duty to preserve  
27 25 and protect the physical integrity of the cemetery or burial  
27 26 site, the interment records, and other records documenting  
27 27 consumer purchases of interment rights to the applicable  
27 28 governmental subdivision, as provided in section 523I.316,  
27 29 subsection 3. The court shall grant the petition if following  
27 30 the first one hundred twenty days of the receivership such  
27 31 duty to preserve and protect cannot be reasonably assumed by a  
27 32 private entity, association, or by other means.  
27 33 Sec. 41. Section 523I.213, Code 2007, is amended to read  
27 34 as follows:  
27 35 523I.213 INSURANCE DIVISION'S ENFORCEMENT FUND.  
28 1 A special revenue fund in the state treasury, to be known  
28 2 as the insurance division's enforcement fund, is created under  
28 3 the authority of the commissioner. The commissioner shall  
28 4 allocate annually from the audit examination fees paid  
28 5 pursuant to section 523I.808, an amount not exceeding fifty  
28 6 thousand dollars, for deposit to the insurance division's  
28 7 enforcement fund. The moneys in the enforcement fund shall be  
28 8 retained in the fund. The moneys are appropriated and,  
28 9 subject to authorization by the commissioner, shall be used to  
28 10 pay auditors, audit examiners, examination expenses,  
28 11 investigative expenses, the expenses of consumer education,  
28 12 compliance, and education programs for filers and other  
28 13 regulated persons, and educational or compliance program  
28 14 materials, the expenses of a toll-free telephone line for  
28 15 consumer complaints, and the expenses of receiverships of  
28 16 perpetual care cemeteries established under section 523I.212.  
28 17 Sec. 42. NEW SECTION. 523I.213A EXAMINATIONS ==  
28 18 AUTHORITY AND SCOPE.  
28 19 1. The commissioner or the commissioner's designee may

28 20 conduct an examination under this chapter of any cemetery as  
28 21 often as the commissioner deems appropriate. If a cemetery  
28 22 has a trust arrangement, the commissioner shall conduct an  
28 23 examination not less than once every three years.  
28 24 2. A cemetery shall reimburse the division for the expense  
28 25 of conducting the examination unless the commissioner waives  
28 26 this requirement or the seller has previously provided to the  
28 27 commissioner a certified copy of an audit conducted by an  
28 28 independent certified public accountant verifying compliance  
28 29 with this chapter for each year in question and the  
28 30 examination conducted by the commissioner does not disclose  
28 31 that the seller has not complied with this chapter for the  
28 32 years in question. The expense of an examination involving  
28 33 multiple cemeteries or other persons shall be prorated among  
28 34 them upon any reasonable basis as determined by the  
28 35 commissioner.

29 1 3. For purposes of completing an examination pursuant to  
29 2 this chapter, the commissioner may examine or investigate any  
29 3 person, or the business of any person, if the examination or  
29 4 investigation is, in the sole discretion of the commissioner,  
29 5 necessary or material to the examination of the cemetery.

29 6 4. Upon determining that an examination should be  
29 7 conducted, the commissioner or the commissioner's designee may  
29 8 appoint one or more examiners to perform the examination and  
29 9 instruct them as to the scope of the examination.

29 10 5. A cemetery or person from whom information is sought,  
29 11 and its officers, directors, and agents shall provide to the  
29 12 examiners appointed under subsection 4, timely, convenient,  
29 13 and free access at their offices, at all reasonable hours, to  
29 14 all books, records, accounts, papers, documents, and all  
29 15 electronic or other recordings related to the property,  
29 16 assets, business, and affairs of the cemetery being examined  
29 17 and shall facilitate the examination as much as possible. If  
29 18 a cemetery, by its officers, directors, employees, or agents,  
29 19 refuses to submit to an examination as provided in this  
29 20 chapter, the commissioner shall immediately report the refusal  
29 21 to the attorney general, who shall then immediately apply to  
29 22 district court for the appointment of a receiver to administer  
29 23 the final affairs of the cemetery.

29 24 6. This section shall not be construed to limit the  
29 25 commissioner's authority to terminate or suspend any  
29 26 examination in order to pursue other legal or regulatory  
29 27 actions pursuant to this chapter. Findings of fact and  
29 28 conclusions made pursuant to an examination are deemed to be  
29 29 prima facie evidence in any legal or regulatory action.

29 30 Sec. 43. NEW SECTION. 523I.213B VENUE.

29 31 All actions relating to the enforcement of this chapter  
29 32 shall be governed by the laws of the state of Iowa. Venue of  
29 33 any action relating to enforcement of this chapter may be in a  
29 34 court of competent jurisdiction in Polk county, at the  
29 35 discretion of the commissioner.

30 1 Sec. 44. Section 523I.304, Code 2007, is amended by adding  
30 2 the following new subsection:

30 3 NEW SUBSECTION. 7. A cemetery owned and controlled by a  
30 4 governmental subdivision shall adopt and enforce a rule  
30 5 allowing any veteran who is a landowner or who lives within  
30 6 the governmental subdivision to purchase an interment space  
30 7 and to be interred within the cemetery. For the purposes of  
30 8 this section, "veteran" means the same as defined in section  
30 9 35.1 or a resident of this state who served in the armed  
30 10 forces of the United States, completed a minimum aggregate of  
30 11 ninety days of active federal service, and was discharged  
30 12 under honorable conditions.

30 13 Sec. 45. Section 523I.305, subsection 3, Code 2007, is  
30 14 amended to read as follows:

30 15 3. SPECIFICATIONS. Upon request, a cemetery shall provide  
30 16 reasonable written specifications and instructions governing  
30 17 installation of memorials, which shall apply to all  
30 18 installations whether performed by the cemetery or another  
30 19 person. The written specifications shall include provisions  
30 20 governing hours of installation or any other relevant  
30 21 administrative requirements of the cemetery. A copy of these  
30 22 specifications and instructions shall be provided upon  
30 23 request, without charge, to the owner of the interment space,  
30 24 next of kin, or a personal representative or agent of the  
30 25 owner, including the person installing the memorial. The  
30 26 person installing the memorial shall comply with the  
30 27 cemetery's written installation specifications and  
30 28 instructions. In order to verify that a memorial is installed  
30 29 on the proper interment space in accordance with cemetery  
30 30 rules and regulations, the cemetery shall mark the place on

30 31 the interment space where the memorial is to be installed and  
30 32 shall inspect the installation when completed. This  
30 33 subsection shall not be construed to require that a cemetery  
30 34 lay out or engineer an interment space for the installation of  
30 35 a memorial. A cemetery shall not adopt or enforce any rule  
31 1 prohibiting the installation of a memorial by a memorial  
31 2 dealer or independent third party, unless the rule is adopted  
31 3 applicable to all memorials from whatever source obtained and  
31 4 enforced uniformly for all memorials installed in the  
31 5 cemetery.  
31 6 Sec. 46. NEW SECTION. 523I.314A STANDARDS FOR INTERMENT  
31 7 SPACES.  
31 8 1. A standard interment space for full body interment  
31 9 developed on or after July 1, 2007, shall measure at least  
31 10 forty inches in width and ninety-six inches in length.  
31 11 2. Prior to the sale of interment rights in an undeveloped  
31 12 area of a cemetery, internal reference markers shall be  
31 13 installed and maintained no more than one hundred feet apart.  
31 14 The internal reference markers shall be established with  
31 15 reference to survey markers that are no more than two hundred  
31 16 feet apart, have been set by a surveyor and mapper, and have  
31 17 been documented in a land survey. Both the map and the land  
31 18 survey shall be maintained by the cemetery and made available  
31 19 upon request to the commissioner and to members of the public.  
31 20 Sec. 47. Section 523I.808, Code 2007, is amended to read  
31 21 as follows:  
31 22 523I.808 AUDIT EXAMINATION FEE.  
31 23 An ~~audit~~ examination fee shall be submitted with the  
31 24 cemetery's annual report in an amount equal to five dollars  
31 25 for each certificate of interment rights issued during the  
31 26 fiscal year covered by the report. The cemetery may charge  
31 27 the ~~audit~~ examination fee directly to the purchaser of the  
31 28 interment rights.  
31 29 Sec. 48. Section 523I.810, subsection 9, Code 2007, is  
31 30 amended to read as follows:  
31 31 9. A cemetery may, by resolution adopted by a vote of at  
31 32 least two-thirds of the members of its board at any authorized  
31 33 meeting of the board, authorize the withdrawal and use of not  
31 34 more than twenty percent of the principal of the care fund to  
31 35 acquire additional land for cemetery purposes, to repair a  
32 1 mausoleum or other building or structure intended for cemetery  
32 2 purposes, ~~or~~ to build, improve, or repair roads and walkways  
32 3 in the cemetery, or to purchase recordkeeping software used to  
32 4 maintain ownership records or interment records. The  
32 5 resolution shall establish a reasonable repayment schedule,  
32 6 not to exceed five years, and provide for interest in an  
32 7 amount comparable to the care fund's current rate of return on  
32 8 its investments. However, the care fund shall not be  
32 9 diminished below an amount equal to the greater of twenty-five  
32 10 thousand dollars or five thousand dollars per acre of land in  
32 11 the cemetery. The resolution, and either a bond or proof of  
32 12 insurance to guarantee replenishment of the care fund, shall  
32 13 be filed with the commissioner thirty days prior to the  
32 14 withdrawal of funds.  
32 15 Sec. 49. Section 523I.813, subsection 1, Code 2007, is  
32 16 amended by striking the subsection and inserting in lieu  
32 17 thereof the following:  
32 18 1. A perpetual care cemetery shall file an annual report  
32 19 at the end of each fiscal year of the cemetery.  
32 20 Sec. 50. Section 523I.813, Code 2007, is amended by adding  
32 21 the following new subsection:  
32 22 NEW SUBSECTION. 3. The commissioner shall levy an  
32 23 administrative penalty in the amount of five hundred dollars  
32 24 against a cemetery that fails to file the annual report when  
32 25 due, payable to the state for deposit in the general fund of  
32 26 the state.  
32 27  
32 28 DIVISION II  
32 29 COORDINATING AMENDMENTS  
32 30 Sec. 51. Section 523A.102, subsection 9, paragraphs b and  
32 31 c, Code 2007, are amended to read as follows:  
32 32 b. If authorized by a purchaser under a purchase  
32 33 agreement, cemetery merchandise has been permanently  
32 34 identified with the name of the purchaser or the beneficiary  
32 35 and delivered to a bonded warehouse or storage facility  
33 1 approved by the commissioner and both title to the merchandise  
33 2 and a warehouse receipt have been delivered to the purchaser  
33 3 or beneficiary and a copy of the warehouse receipt has been  
33 4 delivered to the ~~establishment~~ seller for retention in its  
33 5 files.  
33 6 c. If authorized by a purchaser under a purchase  
33 7 agreement, a polystyrene or polypropylene outer burial

33 7 container has been permanently identified with the name of the  
33 8 purchaser or the beneficiary and delivered to a bonded  
33 9 warehouse or storage facility approved by the commissioner and  
33 10 both title to the merchandise and a warehouse receipt have  
33 11 been delivered to the purchaser or beneficiary and a copy of  
33 12 the warehouse receipt has been delivered to the ~~establishment~~  
33 13 seller for retention in its files.

33 14 Sec. 52. Section 523A.102, subsection 21, Code 2007, is  
33 15 amended to read as follows:

33 16 21. "Parent company" means a corporation that has a  
33 17 controlling interest in ~~an establishment~~ a seller.

33 18 Sec. 53. Section 523A.205, subsection 1, Code 2007, is  
33 19 amended to read as follows:

33 20 1. A financial institution shall file with the  
33 21 commissioner not later than March 1 of each year an annual  
33 22 report on a form prescribed by the commissioner showing all  
33 23 funds deposited by ~~an establishment~~ a seller under a trust  
33 24 agreement during the previous year. Each report shall contain  
33 25 all information requested.

33 26 Sec. 54. Section 523A.401, subsection 5, paragraphs a and  
33 27 b, Code 2007, are amended to read as follows:

33 28 a. Except as necessary and appropriate to satisfy the  
33 29 requirements regarding burial trust funds under Title XIX of  
33 30 the federal Social Security Act, the policy shall not be owned  
33 31 by the ~~establishment seller~~, the policy shall not be  
33 32 irrevocably assigned to the ~~establishment seller~~, and the  
33 33 assignment of proceeds from the insurance policy to the  
33 34 ~~establishment seller~~ shall be limited to the ~~establishment's~~  
33 35 ~~seller's~~ interests as they appear in the purchase agreement,  
34 1 and conditioned on the ~~establishment's seller's~~ delivery of  
34 2 cemetery merchandise, funeral merchandise, and funeral  
34 3 services pursuant to a purchase agreement.

34 4 b. The policy shall provide that any assignment of  
34 5 benefits is contingent upon the ~~establishment's seller's~~  
34 6 delivery of cemetery merchandise, funeral merchandise, and  
34 7 funeral services pursuant to a purchase agreement.

34 8 Sec. 55. Section 523A.401, subsection 6, unnumbered  
34 9 paragraph 1, Code 2007, is amended to read as follows:

34 10 With the written consent of the purchaser, an existing  
34 11 prepaid purchase agreement with trust-funded benefits may be  
34 12 converted to a prepaid purchase agreement with  
34 13 insurance-funded benefits provided the ~~establishment seller~~  
34 14 and the insurance benefits comply with the following  
34 15 provisions:

34 16 Sec. 56. Section 523A.401, subsection 6, paragraph d, Code  
34 17 2007, is amended to read as follows:

34 18 d. The ~~establishment seller~~ shall maintain a copy of any  
34 19 prepaid trust-funded purchase agreement that was converted to  
34 20 a prepaid insurance-funded purchase agreement and retain the  
34 21 payment history records for each converted purchase agreement  
34 22 prior to conversion until the cemetery merchandise, funeral  
34 23 merchandise, and funeral services have been delivered.

34 24 Sec. 57. Section 523A.401, subsection 8, Code 2007, is  
34 25 amended to read as follows:

34 26 8. An insurance company issuing policies funding purchase  
34 27 agreements subject to this chapter shall file an annual report  
34 28 with the commissioner on a form prescribed by the  
34 29 commissioner. The report shall list the applicable insurance  
34 30 policies outstanding for each ~~establishment seller~~. Computer  
34 31 printouts may be submitted so long as each legibly provides  
34 32 the same information required in the prescribed form.

34 33 Sec. 58. Section 523A.402, subsection 5, paragraphs a and  
34 34 b, Code 2007, are amended to read as follows:

34 35 a. Except as necessary and appropriate to satisfy the  
35 1 requirements regarding burial trust funds under Title XIX of  
35 2 the federal Social Security Act, the annuity shall not be  
35 3 owned by the ~~establishment seller~~ or irrevocably assigned to  
35 4 the ~~establishment seller~~ and any designation of the  
35 5 ~~establishment seller~~ as a beneficiary shall not be made  
35 6 irrevocable.

35 7 b. The annuity shall provide that any assignment of  
35 8 benefits is contingent upon the ~~establishment's seller's~~  
35 9 delivery of cemetery merchandise, funeral merchandise, and  
35 10 funeral services pursuant to a purchase agreement.

35 11 Sec. 59. Section 523A.402, subsection 6, unnumbered  
35 12 paragraph 1, Code 2007, is amended to read as follows:

35 13 With the written consent of the purchaser, an existing  
35 14 prepaid purchase agreement with trust-funded benefits may be  
35 15 converted to a prepaid purchase agreement with annuity-funded  
35 16 benefits provided the ~~establishment seller~~ and the annuity  
35 17 benefits comply with the following provisions:

35 18 Sec. 60. Section 523A.402, subsection 6, paragraph d, Code  
35 19 2007, is amended to read as follows:

35 20 d. The ~~establishment seller~~ shall maintain a copy of any  
35 21 prepaid trust=funded purchase agreement that was converted to  
35 22 a prepaid annuity=funded purchase agreement and retain the  
35 23 payment history records for each converted purchase agreement  
35 24 prior to conversion until the cemetery merchandise, funeral  
35 25 merchandise, and funeral services have been delivered.

35 26 Sec. 61. Section 523A.402, subsection 8, Code 2007, is  
35 27 amended to read as follows:

35 28 8. An insurance company issuing annuities funding purchase  
35 29 agreements subject to this chapter shall file an annual report  
35 30 with the commissioner on a form prescribed by the  
35 31 commissioner. The report shall list the applicable annuities  
35 32 outstanding for each ~~establishment seller~~. Computer printouts  
35 33 may be submitted so long as each legibly provides the same  
35 34 information required in the prescribed form.

35 35 Sec. 62. Section 523A.404, subsection 4, Code 2007, is  
36 1 amended to read as follows:

36 2 4. ~~An establishment A seller~~ is prohibited from requiring  
36 3 delivery as a condition of the sale.

36 4 Sec. 63. Section 523A.405, subsection 9, unnumbered  
36 5 paragraph 1, Code 2007, is amended to read as follows:

36 6 With the consent of the purchaser, an existing prepaid  
36 7 purchase agreement with trust=funded benefits may be converted  
36 8 to a prepaid purchase agreement funded by a surety bond  
36 9 provided the ~~establishment seller~~ and the surety bond comply  
36 10 with the following provisions:

36 11 Sec. 64. Section 523A.405, subsection 9, paragraph c, Code  
36 12 2007, is amended to read as follows:

36 13 c. The ~~establishment seller~~ shall maintain a copy of any  
36 14 prepaid trust=funded agreement that was converted to a prepaid  
36 15 purchase agreement funded by a surety bond and retain the  
36 16 payment history records for each converted purchase agreement  
36 17 prior to conversion until the cemetery merchandise, funeral  
36 18 merchandise, and funeral services have been delivered.

36 19 Sec. 65. Section 523A.601, subsection 2, paragraph e, Code  
36 20 2007, is amended to read as follows:

36 21 e. State clearly that the purchaser is entitled to  
36 22 transfer the trust funding, insurance funding, or other trust  
36 23 assets or select another ~~establishment seller~~ to receive the  
36 24 trust funding, insurance funding, or any other trust assets.

36 25 Sec. 66. Section 523A.601, subsection 5, paragraph h, Code  
36 26 2007, is amended to read as follows:

36 27 h. If the funding is being transferred from another  
36 28 ~~establishment seller~~, any material facts related to the  
36 29 revocation of the prior purchase agreement and the transfer of  
36 30 the existing trust funds.

36 31 Sec. 67. Section 523A.602, subsection 2, paragraph b,  
36 32 subparagraphs (1) and (2), Code 2007, are amended to read as  
36 33 follows:

36 34 (1) If a purchase agreement is canceled, a purchaser  
36 35 requests a transfer of the trust assets upon cancellation of a  
37 1 purchase agreement, or another ~~establishment seller~~ provides  
37 2 merchandise or services designated in a purchase agreement,  
37 3 the seller shall refund or transfer within thirty days of  
37 4 receiving a written demand no less than the purchase price of  
37 5 the applicable cemetery merchandise, funeral merchandise, and  
37 6 funeral services adjusted for inflation, using the consumer  
37 7 price index amounts announced by the commissioner annually,  
37 8 less any actual expenses incurred by the seller pursuant to  
37 9 the purchase agreement as set forth in the purchase agreement  
37 10 under section 523A.601, subsection 1, paragraph "f". The  
37 11 amount of the actual expenses deducted by the seller shall not  
37 12 exceed ten percent of the purchase price of the applicable  
37 13 cemetery merchandise, funeral merchandise, and funeral  
37 14 services. The seller may also deduct the value of the  
37 15 cemetery merchandise, funeral merchandise, and funeral  
37 16 services already received by, delivered to, or warehoused for  
37 17 the purchaser.

37 18 (2) If a purchase agreement is canceled before the  
37 19 purchase price is paid in full, a purchaser requests a  
37 20 transfer of the trust assets upon cancellation of a purchase  
37 21 agreement before the purchase price is paid in full, or  
37 22 another ~~establishment seller~~ provides cemetery merchandise,  
37 23 funeral merchandise, funeral services, or a combination  
37 24 thereof, designated in a purchase agreement before the  
37 25 purchase price is paid in full, the seller shall refund or  
37 26 transfer within thirty days of receiving a written demand no  
37 27 less than the amount paid by the purchaser, less any actual  
37 28 expenses incurred by the seller pursuant to the purchase



37 29 agreement as set forth in the purchase agreement under section  
37 30 523A.601, subsection 1, paragraph "f". The amount of the  
37 31 actual expenses deducted by the seller shall not exceed ten  
37 32 percent of the total original purchase price of the applicable  
37 33 cemetery merchandise, funeral merchandise, funeral services,  
37 34 or a combination thereof. The seller may also deduct the  
37 35 value of the cemetery merchandise, funeral merchandise, and  
38 1 funeral services already received by, delivered to, or  
38 2 warehoused for the purchaser.

38 3 Sec. 68. Section 523A.602, subsection 2, paragraph b,  
38 4 subparagraph (3), unnumbered paragraph 1, Code 2007, is  
38 5 amended to read as follows:  
38 6 For the purposes of this paragraph "b", "actual expenses"  
38 7 means all reasonable business expenses of ~~an establishment a~~  
38 8 ~~seller~~ that are associated with the sale of cemetery  
38 9 merchandise, funeral merchandise, funeral services, or a  
38 10 combination thereof. "Actual expenses" includes but is not  
38 11 limited to the following:  
38 12 Sec. 69. Section 523A.602, subsection 2, paragraph b,  
38 13 subparagraph (3), subparagraph subdivisions (d) and (g), Code  
38 14 2007, are amended to read as follows:  
38 15 (d) Licensing fees of the ~~establishment seller~~.  
38 16 (g) Expenses related to employees of the ~~establishment~~  
38 17 ~~seller~~ such as licensing fees, continuing education, and  
38 18 salaries and commissions.

38 19 Sec. 70. Section 523A.802, subsection 1, Code 2007, is  
38 20 amended to read as follows:  
38 21 1. This chapter applies to any advertisement, sale,  
38 22 promotion, or offer made by a person to furnish, upon the  
38 23 future death of a person named or implied in a purchase  
38 24 agreement, cemetery merchandise, funeral merchandise, funeral  
38 25 services, or a combination thereof. Burial accounts and  
38 26 insurance policies are included if the account records or  
38 27 related documents identify the ~~establishment seller~~ that will  
38 28 provide the cemetery merchandise, funeral merchandise, funeral  
38 29 services, or a combination thereof.

38 30 Sec. 71. Section 523A.803, subsection 1, paragraph d, Code  
38 31 2007, is amended to read as follows:  
38 32 d. Investigate the ~~establishment seller~~ and examine the  
38 33 books, accounts, papers, correspondence, memoranda, purchase  
38 34 agreements, files, or other documents or records used by every  
38 35 applicant and ~~permit holder licensee~~ under this chapter.

39 1 Sec. 72. Section 523A.804, unnumbered paragraph 1, Code  
39 2 2007, is amended to read as follows:  
39 3 The commissioner may order ~~an establishment a seller~~ to  
39 4 participate in mediation in any dispute regarding a purchase  
39 5 agreement. Mediation performed under this section shall be  
39 6 conducted by a mediator appointed by the commissioner and  
39 7 shall comply with the provisions of chapter 679C.

39 8 Sec. 73. Section 523A.806, subsection 2, Code 2007, is  
39 9 amended to read as follows:  
39 10 2. Revocation or suspension of any ~~permit license~~ issued  
39 11 under this chapter.

39 12 Sec. 74. Section 523A.901, subsection 1, Code 2007, is  
39 13 amended to read as follows:  
39 14 1. GROUNDS FOR LIQUIDATION. The commissioner may petition  
39 15 the district court for an order directing the commissioner to  
39 16 liquidate ~~an establishment the business of a seller~~ on either  
39 17 of the following grounds:  
39 18 a. The ~~establishment seller~~ did not deposit funds pursuant  
39 19 to section 523A.201 or withdrew funds in a manner inconsistent  
39 20 with this chapter and is insolvent.  
39 21 b. The ~~establishment seller~~ did not deposit funds pursuant  
39 22 to section 523A.201 or withdrew funds in a manner inconsistent  
39 23 with this chapter and the condition of the ~~establishment~~  
39 24 ~~seller~~ is such that further transaction of business would be  
39 25 hazardous, financially or otherwise, to purchasers or the  
39 26 public.

39 27 Sec. 75. Section 523A.901, subsection 2, paragraphs a, b,  
39 28 c, and e, Code 2007, are amended to read as follows:  
39 29 a. An order to liquidate the business of ~~an establishment~~  
39 30 ~~a seller~~ shall appoint the commissioner as liquidator and  
39 31 shall direct the liquidator to immediately take possession of  
39 32 the assets of the ~~establishment seller~~ and to administer them  
39 33 under the general supervision of the court. The liquidator is  
39 34 vested with the title to the property, contracts, and rights  
39 35 of action and the books and records of the ~~establishment~~  
40 1 ~~seller~~ ordered liquidated, wherever located, as of the entry  
40 2 of the final order of liquidation. The filing or recording of  
40 3 the order with the clerk of court and the recorder of deeds of  
40 4 the county in which its principal office or place of business

40 5 is located, or in the case of real estate, with the recorder  
40 6 of deeds of the county where the property is located, is  
40 7 notice as a deed, bill of sale, or other evidence of title  
40 8 duly filed or recorded with the recorder of deeds.

40 9 b. Upon issuance of an order, the rights and liabilities  
40 10 of ~~an establishment a seller~~ and of the ~~establishment's~~  
40 11 ~~seller's~~ creditors, purchasers, owners, and other persons  
40 12 interested in the ~~establishment's seller's~~ estate shall become  
40 13 fixed as of the date of the entry of the order of liquidation,  
40 14 except as provided in subsection 14.

40 15 c. At the time of petitioning for an order of liquidation,  
40 16 or at any time after the time of petitioning, the  
40 17 commissioner, after making appropriate findings of ~~an~~  
40 18 ~~establishment's a seller's~~ insolvency, may petition the court  
40 19 for a declaration of insolvency. After providing notice and  
40 20 hearing as it deems proper, the court may make the  
40 21 declaration.

40 22 e. Within five days after the initiation of an appeal of  
40 23 an order of liquidation, which order has not been stayed, the  
40 24 commissioner shall present for the court's approval a plan for  
40 25 the continued performance of the ~~establishment's seller's~~  
40 26 obligations during the pendency of an appeal. The plan shall  
40 27 provide for the continued performance of purchase agreements  
40 28 in the normal course of events, notwithstanding the grounds  
40 29 alleged in support of the order of liquidation including the  
40 30 ground of insolvency. If the defendant ~~establishment's~~  
40 31 ~~seller's~~ financial condition, in the judgment of the  
40 32 commissioner, will not support the full performance of all  
40 33 obligations during the appeal pendency period, the plan may  
40 34 prefer the claims of certain purchasers and claimants over  
40 35 creditors and interested parties as well as other purchasers  
41 1 and claimants, as the commissioner finds to be fair and  
41 2 equitable considering the relative circumstances of such  
41 3 purchasers and claimants. The court shall examine the plan  
41 4 submitted by the commissioner and if it finds the plan to be  
41 5 in the best interests of the parties, the court shall approve  
41 6 the plan. An action shall not lie against the commissioner or  
41 7 any of the commissioner's deputies, agents, clerks,  
41 8 assistants, or attorneys by any party based on preference in  
41 9 an appeal pendency plan approved by the court.

41 10 Sec. 76. Section 523A.901, subsection 3, paragraph a,  
41 11 subparagraphs (4), (6), (7), (8), (9), (10), (11), (12), (13),  
41 12 (14), (17), and (18), Code 2007, are amended to read as  
41 13 follows:

41 14 (4) Pay reasonable compensation to persons appointed and  
41 15 defray from the funds or assets of the ~~establishment seller~~  
41 16 all expenses of taking possession of, conserving, conducting,  
41 17 liquidating, disposing of, or otherwise dealing with the  
41 18 business and property of the ~~establishment seller~~. If the  
41 19 property of the ~~establishment seller~~ does not contain  
41 20 sufficient cash or liquid assets to defray the costs incurred,  
41 21 the commissioner may advance the costs so incurred out of the  
41 22 insurance division regulatory fund. Amounts so advanced for  
41 23 expenses of administration shall be repaid to the insurance  
41 24 division regulatory fund for the use of the division out of  
41 25 the first available moneys of the ~~establishment seller~~.

41 26 (6) Collect debts and moneys due and claims belonging to  
41 27 the ~~establishment seller~~, wherever located. Pursuant to this  
41 28 subparagraph, the liquidator may do any of the following:

41 29 (a) Institute timely action in other jurisdictions to  
41 30 forestall garnishment and attachment proceedings against  
41 31 debts.

41 32 (b) Perform acts as are necessary or expedient to collect,  
41 33 conserve, or protect its assets or property, including the  
41 34 power to sell, compound, compromise, or assign debts for  
41 35 purposes of collection upon terms and conditions as the  
42 1 liquidator deems best.

42 2 (c) Pursue any creditor's remedies available to enforce  
42 3 claims.

42 4 (7) Conduct public and private sales of the property of  
42 5 the ~~establishment seller~~.

42 6 (8) Use assets of the ~~establishment seller~~ under a  
42 7 liquidation order to transfer obligations of purchase  
42 8 agreements to a solvent ~~establishment seller~~, if the transfer  
42 9 can be accomplished without prejudice to the applicable  
42 10 priorities under subsection 18.

42 11 (9) Acquire, hypothecate, encumber, lease, improve, sell,  
42 12 transfer, abandon, or otherwise dispose of or deal with  
42 13 property of the ~~establishment seller~~ at its market value or  
42 14 upon terms and conditions as are fair and reasonable. The  
42 15 liquidator shall also have power to execute, acknowledge, and

42 16 deliver deeds, assignments, releases, and other instruments  
42 17 necessary to effectuate a sale of property or other  
42 18 transaction in connection with the liquidation.  
42 19 (10) Borrow money on the security of the ~~establishment's~~  
42 20 ~~seller's~~ assets or without security and execute and deliver  
42 21 documents necessary to that transaction for the purpose of  
42 22 facilitating the liquidation. Money borrowed pursuant to this  
42 23 subparagraph shall be repaid as an administrative expense and  
42 24 shall have priority over any other class 1 claims under the  
42 25 priority of distribution established in subsection 18.  
42 26 (11) Enter into contracts as necessary to carry out the  
42 27 order to liquidate and affirm or disavow contracts to which  
42 28 the ~~establishment seller~~ is a party.  
42 29 (12) Continue to prosecute and to institute in the name of  
42 30 the ~~establishment seller~~ or in the liquidator's own name any  
42 31 and all suits and other legal proceedings, in this state or  
42 32 elsewhere, and to abandon the prosecution of claims the  
42 33 liquidator deems unprofitable to pursue further.  
42 34 (13) Prosecute an action on behalf of the creditors,  
42 35 purchasers, or owners against an officer of the ~~establishment~~  
43 1 ~~seller~~ or any other person.  
43 2 (14) Remove records and property of the ~~establishment~~  
43 3 ~~seller~~ to the offices of the commissioner or to other places  
43 4 as may be convenient for the purposes of efficient and orderly  
43 5 execution of the liquidation.  
43 6 (17) File necessary documents for recording in the office  
43 7 of the recorder of deeds or record office in this state or  
43 8 elsewhere where property of the ~~establishment seller~~ is  
43 9 located.  
43 10 (18) Assert defenses available to the ~~establishment seller~~  
43 11 against third persons including statutes of limitations,  
43 12 statutes of fraud, and the defense of usury. A waiver of a  
43 13 defense by the ~~establishment seller~~ after a petition in  
43 14 liquidation has been filed shall not bind the liquidator.  
43 15 Sec. 77. Section 523A.901, subsection 4, paragraph a,  
43 16 subparagraphs (1) and (2), Code 2007, are amended to read as  
43 17 follows:  
43 18 (1) Mailing notice, by first-class mail, to all persons  
43 19 known or reasonably expected to have claims against the  
43 20 ~~establishment seller~~, including purchasers, at their last  
43 21 known address as indicated by the records of the ~~establishment~~  
43 22 ~~seller~~.  
43 23 (2) Publication of notice in a newspaper of general  
43 24 circulation in the county in which the ~~establishment seller~~  
43 25 has its principal place of business and in other locations as  
43 26 the liquidator deems appropriate.  
43 27 Sec. 78. Section 523A.901, subsection 4, paragraph c, Code  
43 28 2007, is amended to read as follows:  
43 29 c. If notice is given pursuant to this subsection, the  
43 30 distribution of assets of the ~~establishment seller~~ under this  
43 31 chapter shall be conclusive with respect to claimants, whether  
43 32 or not a claimant actually received notice.  
43 33 Sec. 79. Section 523A.901, subsection 5, Code 2007, is  
43 34 amended to read as follows:  
43 35 5. ACTIONS BY AND AGAINST LIQUIDATOR.  
44 1 a. After issuance of an order appointing a liquidator of  
44 2 ~~an establishment the business of a seller~~, an action at law or  
44 3 equity shall not be brought against the ~~establishment seller~~  
44 4 within this state or elsewhere, and existing actions shall not  
44 5 be maintained or further presented after issuance of the  
44 6 order. Whenever in the liquidator's judgment, protection of  
44 7 the estate of the ~~establishment seller~~ necessitates  
44 8 intervention in an action against the ~~establishment seller~~  
44 9 that is pending outside this state, the liquidator may  
44 10 intervene in the action. The liquidator may defend, at the  
44 11 expense of the estate of the ~~establishment seller~~, an action  
44 12 in which the liquidator intervenes under this section.  
44 13 b. Within two years or such additional time as applicable  
44 14 law may permit, the liquidator, after the issuance of an order  
44 15 for liquidation, may institute an action or proceeding on  
44 16 behalf of the estate of the ~~establishment seller~~ upon any  
44 17 cause of action against which the period of limitation fixed  
44 18 by applicable law has not expired at the time of the filing of  
44 19 the petition upon which the order is entered. If a period of  
44 20 limitation is fixed by agreement for instituting a suit or  
44 21 proceeding upon a claim, or for filing a claim, proof of  
44 22 claim, proof of loss, demand, notice, or the like, or if in a  
44 23 proceeding, judicial or otherwise, a period of limitation is  
44 24 fixed in the proceeding or pursuant to applicable law for  
44 25 taking an action, filing a claim or pleading, or doing an act,  
44 26 and if the period has not expired at the date of the filing of

44 27 the petition, the liquidator may, for the benefit of the  
44 28 estate, take any action or do any act, required of or  
44 29 permitted to the ~~establishment seller~~, within a period of one  
44 30 hundred eighty days subsequent to the entry of an order for  
44 31 liquidation, or within a further period as is shown to the  
44 32 satisfaction of the court not to be unfairly prejudicial to  
44 33 the other party.

44 34 c. A statute of limitations or defense of laches shall not  
44 35 run with respect to an action against ~~an establishment a~~  
45 1 ~~seller~~ between the filing of a petition for liquidation  
45 2 against the ~~establishment business of a seller~~ and the denial  
45 3 of the petition. An action against the ~~establishment seller~~  
45 4 that might have been commenced when the petition was filed may  
45 5 be commenced within sixty days after the petition is denied.

45 6 Sec. 80. Section 523A.901, subsection 6, paragraph a, Code  
45 7 2007, is amended to read as follows:

45 8 a. As soon as practicable after the liquidation order but  
45 9 not later than one hundred twenty days after such order, the  
45 10 liquidator shall prepare in duplicate a list of the  
45 11 ~~establishment's seller's~~ assets. The list shall be amended or  
45 12 supplemented as the liquidator may determine. One copy shall  
45 13 be filed in the office of the clerk of court, and one copy  
45 14 shall be retained for the liquidator's files. Amendments and  
45 15 supplements shall be similarly filed.

45 16 Sec. 81. Section 523A.901, subsection 7, paragraph a, Code  
45 17 2007, is amended to read as follows:

45 18 a. A transfer made and an obligation incurred by ~~an~~  
45 19 ~~establishment a seller whose business is~~ within one year prior  
45 20 to the filing of a successful petition for liquidation under  
45 21 this chapter is fraudulent as to then existing and future  
45 22 creditors if made or incurred without fair consideration, or  
45 23 with actual intent to hinder, delay, or defraud either  
45 24 existing or future creditors. A fraudulent transfer made or  
45 25 an obligation incurred by ~~an establishment a seller whose~~  
45 26 ~~business is~~ ordered to be liquidated under this chapter may be  
45 27 avoided by the liquidator, except as to a person who in good  
45 28 faith is a purchaser, lienor, or obligee for a present fair  
45 29 equivalent value. A purchaser, lienor, or obligee, who in  
45 30 good faith has given a consideration less than present fair  
45 31 equivalent value for such transfer, lien, or obligation, may  
45 32 retain the property, lien, or obligation as security for  
45 33 repayment. The court may, on due notice, order any such  
45 34 transfer, lien, or obligation to be preserved for the benefit  
45 35 of the estate, and in that event, the receiver shall succeed  
46 1 to and may enforce the rights of the purchaser, lienor, or  
46 2 obligee.

46 3 Sec. 82. Section 523A.901, subsection 7, paragraph b,  
46 4 subparagraph (2), Code 2007, is amended to read as follows:

46 5 (2) A transfer of real property is made when it becomes  
46 6 perfected so that a subsequent bona fide purchaser from the  
46 7 ~~establishment seller~~ could not obtain rights superior to the  
46 8 rights of the transferee.

46 9 Sec. 83. Section 523A.901, subsection 8, paragraphs a, b,  
46 10 and c, Code 2007, are amended to read as follows:

46 11 a. After a petition for liquidation has been filed, a  
46 12 transfer of real property of the ~~establishment seller~~ made to  
46 13 a person acting in good faith is valid against the liquidator  
46 14 if made for a present fair equivalent value. If the transfer  
46 15 is not made for a present fair equivalent value, then the  
46 16 transfer is valid to the extent of the present consideration  
46 17 actually paid for which amount the transferee shall have a  
46 18 lien on the property transferred. The commencement of a  
46 19 proceeding in liquidation is constructive notice upon the  
46 20 recording of a copy of the petition for or order of  
46 21 liquidation with the recorder of deeds in the county where any  
46 22 real property in question is located. The exercise by a court  
46 23 of the United States or a state or jurisdiction to authorize a  
46 24 judicial sale of real property of the ~~establishment seller~~  
46 25 within a county in a state shall not be impaired by the  
46 26 pendency of a proceeding unless the copy is recorded in the  
46 27 county prior to the consummation of the judicial sale.

46 28 b. After a petition for liquidation has been filed and  
46 29 before either the liquidator takes possession of the property  
46 30 of the ~~establishment seller~~ or an order of liquidation is  
46 31 granted:

46 32 (1) A transfer of the property, other than real property,  
46 33 of the ~~establishment seller~~ made to a person acting in good  
46 34 faith is valid against the liquidator if made for a present  
46 35 fair equivalent value. If the transfer was not made for a  
47 1 present fair equivalent value, then the transfer is valid to  
47 2 the extent of the present consideration actually paid for

47 3 which amount the transferee shall have a lien on the property  
47 4 transferred.

47 5 (2) If acting in good faith, a person indebted to the  
47 6 ~~establishment seller~~ or holding property of the ~~establishment~~  
47 7 ~~seller~~ may pay the debt or deliver the property, or any part  
47 8 of the property, to the ~~establishment seller~~ or upon the  
47 9 ~~establishment's seller's~~ order as if the petition were not  
47 10 pending.

47 11 (3) A person having actual knowledge of the pending  
47 12 liquidation is not acting in good faith.

47 13 (4) A person asserting the validity of a transfer under  
47 14 this subsection has the burden of proof. Except as provided  
47 15 in this subsection, a transfer by or on behalf of the  
47 16 ~~establishment seller~~ after the date of the petition for  
47 17 liquidation by any person other than the liquidator is not  
47 18 valid against the liquidator.

47 19 c. A person receiving any property from the ~~establishment~~  
47 20 ~~seller~~ or any benefit of the property of the ~~establishment~~  
47 21 ~~seller~~ which is a fraudulent transfer under paragraph "a" is  
47 22 personally liable for the property or benefit and shall  
47 23 account to the liquidator.

47 24 Sec. 84. Section 523A.901, subsection 9, paragraph a,  
47 25 subparagraphs (1) and (2), Code 2007, are amended to read as  
47 26 follows:

47 27 (1) A preference is a transfer of the property of ~~an~~  
47 28 ~~establishment a seller~~ to or for the benefit of a creditor for  
47 29 an antecedent debt made or suffered by the ~~establishment~~  
47 30 ~~seller~~ within one year before the filing of a successful  
47 31 petition for liquidation under this chapter, the effect of  
47 32 which transfer may be to enable the creditor to obtain a  
47 33 greater percentage of this debt than another creditor of the  
47 34 same class would receive. If a liquidation order is entered  
47 35 while the ~~establishment seller~~ is already subject to a  
48 1 receivership, then the transfers are preferences if made or  
48 2 suffered within one year before the filing of the successful  
48 3 petition for the receivership, or within two years before the  
48 4 filing of the successful petition for liquidation, whichever  
48 5 time is shorter.

48 6 (2) A preference may be avoided by the liquidator if any  
48 7 of the following exist:

48 8 (a) The ~~establishment seller~~ was insolvent at the time of  
48 9 the transfer.

48 10 (b) The transfer was made within four months before the  
48 11 filing of the petition.

48 12 (c) At the time the transfer was made, the creditor  
48 13 receiving it or to be benefited by the transfer or the  
48 14 creditor's agent acting with reference to the transfer had  
48 15 reasonable cause to believe that the ~~establishment seller~~ was  
48 16 insolvent or was about to become insolvent.

48 17 (d) The creditor receiving the transfer was an officer, or  
48 18 an employee, attorney, or other person who was in fact in a  
48 19 position of comparable influence in the ~~establishment seller~~  
48 20 to an officer whether or not the person held the position of  
48 21 an officer, owner, or other person, firm, corporation,  
48 22 association, or aggregation of persons with whom the  
48 23 ~~establishment seller~~ did not deal at arm's length.

48 24 Sec. 85. Section 523A.901, subsection 9, paragraph b,  
48 25 subparagraph (2), Code 2007, is amended to read as follows:

48 26 (2) A transfer of real property is made when it becomes  
48 27 perfected so that a subsequent bona fide purchaser from the  
48 28 ~~establishment seller~~ could not obtain rights superior to the  
48 29 rights of the transferee.

48 30 Sec. 86. Section 523A.901, subsection 9, paragraphs e, i,  
48 31 and j, Code 2007, are amended to read as follows:

48 32 e. If a lien which is voidable under paragraph "a",  
48 33 subparagraph (2), has been dissolved by the furnishing of a  
48 34 bond or other obligation, the surety of which has been  
48 35 indemnified directly or indirectly by the transfer or the  
49 1 creation of a lien upon property of ~~an establishment a seller~~  
49 2 before the filing of a petition under this chapter which  
49 3 results in the liquidation order, the indemnifying transfer or  
49 4 lien is also voidable.

49 5 i. If a creditor has been preferred for property which  
49 6 becomes a part of the ~~establishment's seller's~~ estate, and  
49 7 afterward in good faith gives the ~~establishment seller~~ further  
49 8 credit without security of any kind, the amount of the new  
49 9 credit remaining unpaid at the time of the petition may be set  
49 10 off against the preference which would otherwise be  
49 11 recoverable from the creditor.

49 12 j. If within four months before the filing of a successful  
49 13 petition for liquidation under this chapter, or at any time in

49 14 contemplation of a proceeding to liquidate, ~~an establishment a~~  
49 15 ~~seller~~, directly or indirectly, pays money or transfers  
49 16 property to an attorney for services rendered or to be  
49 17 rendered, the transaction may be examined by the court on its  
49 18 own motion or shall be examined by the court on petition of  
49 19 the liquidator. The payment or transfer shall be held valid  
49 20 only to the extent of a reasonable amount to be determined by  
49 21 the court. The excess may be recovered by the liquidator for  
49 22 the benefit of the estate. However, where the attorney is in  
49 23 a position of influence in the ~~establishment business of the~~  
49 24 ~~seller~~ or an affiliate, payment of any money or the transfer  
49 25 of any property to the attorney for services rendered or to be  
49 26 rendered shall be governed by the provisions of paragraph "a",  
49 27 subparagraph (2), subparagraph subdivision (d).

49 28 Sec. 87. Section 523A.901, subsection 9, paragraph k,  
49 29 subparagraphs (1) and (2), Code 2007, are amended to read as  
49 30 follows:

49 31 (1) An officer, manager, employee, shareholder,  
49 32 subscriber, attorney, or other person acting on behalf of the  
49 33 ~~establishment seller~~ who knowingly participates in giving any  
49 34 preference when the person has reasonable cause to believe the  
49 35 ~~establishment seller~~ is or is about to become insolvent at the  
50 1 time of the preference is personally liable to the liquidator  
50 2 for the amount of the preference. There is an inference that  
50 3 reasonable cause exists if the transfer was made within four  
50 4 months before the date of filing of this successful petition  
50 5 for liquidation.

50 6 (2) A person receiving property from the ~~establishment~~  
50 7 ~~seller~~ or the benefit of the property of the ~~establishment~~  
50 8 ~~seller~~ as a preference voidable under paragraph "a" is  
50 9 personally liable for the property and shall account to the  
50 10 liquidator.

50 11 Sec. 88. Section 523A.901, subsection 13, paragraph d,  
50 12 Code 2007, is amended to read as follows:

50 13 d. A judgment or order against ~~an establishment a seller~~  
50 14 entered after the date of filing of a successful petition for  
50 15 liquidation, or a judgment or order against the ~~establishment~~  
50 16 ~~seller~~ entered at any time by default or by collusion need not  
50 17 be considered as evidence of liability or of the amount of  
50 18 damages. A judgment or order against ~~an establishment a~~  
50 19 ~~seller~~ before the filing of the petition need not be  
50 20 considered as evidence of liability or of the amount of  
50 21 damages.

50 22 Sec. 89. Section 523A.901, subsection 16, Code 2007, is  
50 23 amended to read as follows:

50 24 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim  
50 25 against ~~an establishment a seller~~ is secured in whole or in  
50 26 part by the undertaking of another person, fails to prove and  
50 27 file that claim, then the other person may do so in the  
50 28 creditor's name and shall be subrogated to the rights of the  
50 29 creditor, whether the claim has been filed by the creditor or  
50 30 by the other person in the creditor's name to the extent that  
50 31 the other person discharges the undertaking. However, in the  
50 32 absence of an agreement with the creditor to the contrary, the  
50 33 other person is not entitled to any distribution until the  
50 34 amount paid to the creditor on the undertaking plus the  
50 35 distributions paid on the claim from the ~~establishment's~~  
51 1 ~~seller's~~ estate to the creditor equal the amount of the entire  
51 2 claim of the creditor. An excess received by the creditor  
51 3 shall be held by the creditor in trust for the other person.

51 4 Sec. 90. Section 523A.901, subsection 18, unnumbered  
51 5 paragraph 1, Code 2007, is amended to read as follows:

51 6 The priority of distribution of claims from the  
51 7 ~~establishment's seller's~~ estate shall be in accordance with  
51 8 the order in which each class of claims is set forth. Claims  
51 9 in each class shall be paid in full or adequate funds retained  
51 10 for the payment before the members of the next class receive  
51 11 any payment. Subclasses shall not be established within a  
51 12 class. The order of distribution of claims is as follows:

51 13 Sec. 91. Section 523A.901, subsection 18, paragraph a,  
51 14 subparagraph (1), Code 2007, is amended to read as follows:

51 15 (1) Actual and necessary costs of preserving or recovering  
51 16 the assets of the ~~establishment seller~~.

51 17 Sec. 92. Section 523A.901, subsection 19, paragraph a,  
51 18 Code 2007, is amended to read as follows:

51 19 a. The liquidator shall review claims duly filed in the  
51 20 liquidation and shall make further investigation as necessary.  
51 21 The liquidator may compound, compromise, or in any other  
51 22 manner negotiate the amount for which claims will be  
51 23 recommended to the court except where the liquidator is  
51 24 required by law to accept claims as settled by a person or

51 25 organization. Unresolved disputes shall be determined under  
51 26 subsection 15. As soon as practicable, the liquidator shall  
51 27 present to the court a report of the claims against the  
51 28 ~~establishment seller~~ with the liquidator's recommendations.  
51 29 The report shall include the name and address of each claimant  
51 30 and the amount of the claim finally recommended.

51 31 Sec. 93. Section 523A.901, subsection 21, paragraph b,  
51 32 Code 2007, is amended to read as follows:

51 33 b. Funds withheld under subsection 14 and not distributed  
51 34 shall upon discharge of the liquidator be deposited with the  
51 35 treasurer of state and paid pursuant to subsection 18. Sums  
52 1 remaining which under subsection 18 would revert to the  
52 2 undistributed assets of the ~~establishment seller~~ shall be  
52 3 transferred to the insurance division regulatory fund and  
52 4 become the property of the state as provided under paragraph  
52 5 "a", unless the commissioner in the commissioner's discretion  
52 6 petitions the court to reopen the liquidation pursuant to  
52 7 subsection 23.

52 8 Sec. 94. Section 523A.901, subsection 24, Code 2007, is  
52 9 amended to read as follows:

52 10 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF  
52 11 LIQUIDATION. If it appears to the commissioner that the  
52 12 records of ~~an establishment the business of a seller~~ in the  
52 13 process of liquidation or completely liquidated are no longer  
52 14 useful, the commissioner may recommend to the court and the  
52 15 court shall direct what records shall be retained for future  
52 16 reference and what records shall be destroyed.

52 17  
52 18  
52 19

---

JOHN P. KIBBIE  
President of the Senate

52 22  
52 23

---

PATRICK J. MURPHY  
Speaker of the House

52 27  
52 28

52 29 I hereby certify that this bill originated in the Senate and  
52 30 is known as Senate File 559, Eighty=second General Assembly.

52 31  
52 32

---

MICHAEL E. MARSHALL  
Secretary of the Senate

52 35 Approved \_\_\_\_\_, 2007

53 1  
53 2  
53 3

---

53 4 CHESTER J. CULVER  
53 5 Governor